

AUG 2 1984

Nos. 83-6381 and 83-1660

ALEXANDER C. STEVAS,
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1983

GILL PARKER, et al.,
PETITIONERS,

v.

JOHN R. BLOCK, Secretary of Agriculture, et al.,
RESPONDENTS.

CHARLES M. ATKINS, Commissioner of
the Massachusetts Department of Public Welfare,
PETITIONER,

v.

GILL PARKER, et al.,
RESPONDENTS.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

JOINT APPENDIX

FRANCIS X. BELLOTTI
ATTORNEY GENERAL
ELLEN L. JANOS
ASSISTANT ATTORNEY GENERAL
One Ashburton Place
Boston, MA 02108
(617) 727-1031
*Counsel of Record
for Petitioner Atkins*

REX E. LEE
SOLICITOR GENERAL
Department of Justice
Washington, D.C. 20530
(202) 633-2217
*Counsel of Record
for Respondent Block*

STEVEN A. HITOV
WESTERN MASSACHUSETTS
LEGAL SERVICES
145 State Street
Springfield, MA 01103
(413) 781-7814
*Counsel of Record
for Petitioner Parker*

PETITION FOR CERTIORARI FILED MARCH 6, 1984
CROSS-PETITION FOR CERTIORARI FILED APRIL 9, 1984
CERTIORARI GRANTED JUNE 18, 1984

BEST AVAILABLE COPY

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RELEVANT DOCKET ENTRIES

DISTRICT COURT No. 81-0365-F

<i>Date</i>	<i>NR</i>	<i>Proceedings</i>
<i>1981</i>		
Dec. 10	02	Complaint filed; summons issued.
Dec. 16	07	FREEDMAN, J. Hearing on Pltfs' motion for a temporary restraining order.
Dec. 17	08	FREEDMAN, J. Order entered on Class Certification and TRO.
Dec. 31	17	FREEDMAN, J. Hearing on Ps' Motion for Contempt or TRO: argument; motion denied.
<i>1982</i>		
Jan. 06	18	AMENDED SUPPLEMENTAL COMPLAINT filed
Jan. 26	25	DEF. SPIRITO'S ANSWER filed
Feb. 10	31	Def. Block's ANSWER to AMENDED SUPPLEMENTAL COMPLAINT filed; cs
Feb. 11	31	FREEDMAN, J. Counsel present for hearing on the merits. Court continues hearing until such time that counsel have agreed on the issues to be heard and discovery matters have been resolved. Discovery problems to be referred to Magistrate in Boston.
May 10	41	Def. Spirito's Motion to Amend Answer filed.
May 18	44	FREEDMAN, J. #41 ALLOWED (by EMK).
Oct. 12	74	FREEDMAN, J. Counsel and parties present for non-jury trial.
<i>1983</i>		
Mar. 24	89	FREEDMAN, J. Findings of Fact & Conclusions of Law Entered.
Mar. 24	90	FREEDMAN, J. Order entered.
Mar. 25	91	Judgment for Plaintiffs entered.

DISTRICT COURT NO. 81-0365-F

<i>Date</i>	<i>NR</i>	<i>Proceedings</i>
1983		
Apr. 5	92	State Deft's motion to alter or amend judgment filed.
Apr. 6	93	State Deft's notice of appeal filed.
Apr. 6	94	FREEDMAN, J. Corrected Order Entered.
Apr. 7	95	FREEDMAN, J. Corrected Order Entered.

COURT OF APPEALS NO. 83-1270

Filings-Proceedings

Jun. 20	Brief and appendix for the Mass. Commissioner of Public Welfare received and filed.
Jul. 21	Brief of appellees received and filed.
Jul. 29	Reply brief of the Massachusetts Commissioner of Public Welfare, Defendant Appellant, received and filed.
Aug. 1	Reply brief for the Federal Appellant received and filed.
Sept. 7	Heard by Coffin, Bownes and Fairchild, JJ.
Dec. 7	JUDGMENT: The judgment of the district court is affirmed in part, reversed in part and the cause is remanded to the district court for further proceedings consistent with the opinion this date. No costs. Opinion of the Court by Coffin, J.

1984

Mar. 06	Order (Coffin, Fairchild and Bownes, JJ) denying belated motion of enlarge time of the appellees to file a petition for rehearing in accordance with the order of this Court.
Mar. 15	Mandate issued, copy filed and original papers returned to the District Court.

No. 83-1320

May 16	Motion filed. Order (Coffin, J) consolidating this case and 83-1270 for purpose of argument.
Jun. 20	Brief for Federal appellant received and filed.
Dec. 7	Judgment.

11/81

MASSACHUSETTS DEPARTMENT OF PUBLIC WELFARE

* 18% *

*** IMPORTANT NOTICE - READ CAREFULLY ***

RECENT CHANGES IN THE FOOD STAMP PROGRAM HAVE BEEN MADE IN ACCORDANCE WITH 1981 FEDERAL LAW. UNDER THIS LAW, THE EARNED INCOME DEDUCTION FOR FOOD STAMP BENEFITS HAS BEEN LOWERED FROM 20 TO 18 PERCENT. THIS REDUCTION MEANS THAT A HIGHER PORTION OF YOUR HOUSEHOLD'S EARNED INCOME WILL BE COUNTED IN DETERMINING YOUR ELIGIBILITY AND BENEFIT AMOUNT FOR FOOD STAMPS. AS A RESULT OF THIS FEDERAL CHANGE, YOUR BENEFITS WILL EITHER BE REDUCED IF YOU REMAIN ELIGIBLE OR YOUR BENEFITS WILL BE TERMINATED. (FOOD STAMP MANUAL CITATION: 106 CMR:364.400)

YOUR RIGHT TO A FAIR HEARING:

YOU HAVE THE RIGHT TO REQUEST A FAIR HEARING IF YOU DISAGREE WITH THIS ACTION. IF YOU ARE REQUESTING A HEARING, YOUR FOOD STAMP BENEFITS WILL BE REINSTATED AT THE CURRENT AMOUNT IF YOUR APPEAL IS RECEIVED BY THE DIVISION OF HEARINGS WITHIN 10 DAYS OF THIS NOTICE. IF YOUR APPEAL IS DENIED, THE DEPARTMENT HAS THE RIGHT TO RECOVER FROM YOU ANY ADDED BENEFITS WHICH YOU RECEIVED DURING THE APPEAL PROCESS. YOU MAY STILL APPEAL THIS ACTION AFTER TEN DAYS, BUT YOU MUST DO SO WITHIN 90 DAYS OF THE DATE OF THIS NOTICE. OTHERWISE, YOUR REQUEST FOR HEARING AFTER THAT DATE WILL BE DENIED. TO REQUEST A FAIR HEARING, YOU MUST SIGN AND DATE THE ENCLOSED CARD ON WHICH YOUR NAME AND ADDRESS ARE PRE-PRINTED AND MAIL IT TO: DIVISION OF HEARINGS, P.O. BOX 167, ESSEX STATION, BOSTON, MA 02112. IF YOU HAVE QUESTIONS CONCERNING THE CORRECTNESS OF YOUR BENEFITS COMPUTATION OR THE FAIR HEARING PROCESS, CONTACT YOUR LOCAL WELFARE OFFICE. YOU MAY FILE AN APPEAL AT ANY TIME IF YOU FEEL THAT YOU ARE NOT RECEIVING THE CORRECT AMOUNT OF FOOD STAMPS.

December 26, 1981

MASSACHUSETTS DEPARTMENT OF PUBLIC WELFARE

Page 1

IMPORTANT FOOD STAMP NOTICE, READ CAREFULLY

If you received a Food Stamp ATP this month, it reflected a reduction in benefit level. You received information concerning this reduction in a prior notice. Because there was not a specific date on the prior notice, you may not have been certain as to the date by which you had a right to appeal the reduction. As a result of the omission of the date, your appeal rights have been extended and your benefits for the month of December have been reinstated to their prior level. Please see page 2 of this notice for your appeal rights and for information regarding the reasons for the changes. The reductions will be effective 1/1/82 and will be reflected in your January ATP.

If you did not receive a December ATP, your benefits will be terminated effective with your January 1982 ATP. For your appeal rights see page 2. However you will receive a Food Stamp ATP for December at the prior benefit level.

If you have already appealed on the basis of the prior notice, that appeal will be heard and your Food Stamp benefits will be continued at the reinstated level until the appeal is decided, and you need not file a second appeal at this time. If you have not appealed and now wish to do so, your appeal rights contained on page 2 begin to run from the date at the top of this page.

The change in your benefits will be based upon your earned income as last reported to the Department. If you have a change of income of less than \$25, you should report the change to the Department as it may be of benefit to you.

If you have received an ATP, the amount reflects a reduction resulting from the changes described on page 2. This amount is the benefit level that will be effective in January 1982; however, you will receive a supplement to bring the December benefit level amount up to the prior level.

If you have been notified that your certification period ends on 12/31/81, you must have taken action to be recertified. In this situation you may appeal the Department's action but you will not be entitled to receive continuation of your benefits pending appeal.

This notice refers only to changes described on page 2. Any other changes will remain in effect. This is not an additional reduction in your Food Stamp benefit amount.

December 26, 1981

MASSACHUSETTS DEPARTMENT OF PUBLIC WELFARE

PAGE 2
18%

***** IMPORTANT NOTICE - READ CAREFULLY *****

RECENT CHANGES IN THE FOOD STAMP PROGRAM HAVE BEEN MADE IN ACCORDANCE WITH 1981 FEDERAL LAW. UNDER THIS LAW, THE EARNED INCOME DEDUCTION FOR FOOD STAMP BENEFITS HAS BEEN LOWERED FROM 20 TO 10 PERCENT. THIS REDUCTION MEANS THAT A HIGHER PORTION OF YOUR HOUSEHOLD'S EARNED INCOME WILL BE COUNTED IN DETERMINING YOUR ELIGIBILITY AND BENEFIT AMOUNT FOR FOOD STAMPS. AS A RESULT OF THIS FEDERAL CHANGE, YOUR BENEFITS WILL EITHER BE REDUCED IF YOU REMAIN ELIGIBLE OR YOUR BENEFITS WILL BE TERMINATED. (FOOD STAMP MANUAL CITATION: 106 CMR:364.400)

YOUR RIGHT TO A FAIR HEARING:

YOU HAVE THE RIGHT TO REQUEST A FAIR HEARING IF YOU DISAGREE WITH THIS ACTION. IF YOU ARE REQUESTING A HEARING, YOUR FOOD STAMP BENEFITS WILL BE REINSTATED AT THE CURRENT AMOUNT IF YOUR APPEAL IS RECEIVED BY THE DIVISION OF HEARINGS WITHIN 10 DAYS OF THE DATE AT THE TOP OF THIS PAGE. IF YOUR APPEAL IS DENIED, THE DEPARTMENT HAS THE RIGHT TO RECOVER FROM YOU ANY ADDED BENEFITS WHICH YOU RECEIVED DURING THE APPEAL PROCESS. YOU MAY STILL APPEAL THIS ACTION AFTER TEN DAYS, BUT YOU MUST DO SO WITHIN 90 DAYS OF THE DATE AT THE TOP OF THIS PAGE. OTHERWISE, YOUR REQUEST FOR A FAIR HEARING AFTER THAT DATE WILL BE DENIED. TO REQUEST A FAIR HEARING, YOU MUST SIGN AND DATE THE ENCLOSED CARD ON WHICH YOUR NAME AND ADDRESS ARE PRE-PRINTED AND MAIL IT TO: DIVISION OF HEARINGS, P.O. BOX 167, ESSEX STATION, BOSTON, MA 02112. IF YOU HAVE QUESTIONS CONCERNING THE CORRECTNESS OF YOUR BENEFITS COMPUTATION OR THE FAIR HEARING PROCESS, CONTACT YOUR LOCAL WELFARE OFFICE. YOU MAY FILE AN APPEAL AT ANY TIME IF YOU FEEL THAT YOU ARE NOT RECEIVING THE CORRECT AMOUNT OF FOOD STAMPS.

CR

[TITLE OMITTED IN PRINTING]

DEFENDANT SPIRITO'S RESPONSES TO PLAINTIFFS'
REQUEST FOR ADMISSIONS

1. Every household which was participating in the Monthly Income Reporting System in November 1981 and which also received food stamps at that time was sent the undated notice.

RESPONSE: Admitted.

2. Every household which was participating in the Monthly Income Reporting System in November 1981 and which also received food stamps at that time was sent the December 26 notice.

RESPONSE: Admitted.

3. In November 1981, for those food stamp households participating in the Monthly Income Reporting System, the individual data which the BSO computer needed in order to compute and issue that household's December, 1981 ATP was obtained directly from the MIRS computer.

RESPONSE: The state defendant is unable at the present time to admit or deny this request. Upon further investigation and discussions with appropriate officials, the state defendant will supplement its response.

4. Every household which is listed on the 902 Report was sent the December notice.

RESPONSE: Admitted.

5. Every household which is listed on the 902 Report was sent the December 26 notice.

RESPONSE: Admitted.

6. The 902 Report is organized so that households are listed by their local welfare service office and, within the local welfare service office listing, households are listed by the caseworker responsible for those households.

RESPONSE: Admitted.

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DEFENDANT SPIRITO'S ANSWERS
TO PLAINTIFF'S INTERROGATORIES

1. QUESTION: State the number of food stamp households which were sent the general notice (annexed to the complaint herein as Exhibit 'A') implementing the 18% earned income deduction in the food stamp program.

ANSWER: 19,654 households.

2. QUESTION: For each household included in your answer to Interrogatory #1, state the amount of food stamp benefits that that household received in November, 1981 and the amount of food stamp benefits that that household was scheduled to receive in December, 1981 based upon application of the 18% earned income disregard to that household.

ANSWER: A. G.L. c. 66, §17A precludes the release of information relating to individual food stamp households.

13. QUESTION: Are the machines presently utilized by the Department capable of generating individual food stamp notices to the entire plaintiff class, including the exact dollar amount of any reduction in food stamps due to the change from 20% to 18% in the earned income disregard, if programmed differently or if the present programs were modified? If the answer to this Interrogatory is yes, why haven't the machines been so programmed?

ANSWER: Yes; with respect to mass changes, federal regulations do not require individual food

stamp notices which include the exact dollar amount of any reductions in food stamps.

16. QUESTION: By what method was page one (1) of the notice of December 26, 1981 reproduced?

ANSWER: The notice was typed on standard 8½ x 11 inch paper. The document was reduced and a paper master was created. The cards were produced using offset printing equipment.

17. QUESTION: Were any employees of the United States Department of Agriculture involved in drafting, reviewing or approving either the original "notice" or the December 26 notice? If so identify each such individual by name and position, and describe each such individual's responsibilities with respect to the notice with which they were involved.

ANSWER: No.

19. QUESTION: How many members of the class received notices (other than the 18% notices)

a) in October, 1981 increasing their food stamps?

b) in November, 1981 increasing their food stamps?

c) in December, 1981 increasing their food stamps?

d) in October, 1981 decreasing their food stamps?

e) in November, 1981 decreasing their food stamps?

f) in December, 1981 decreasing their food stamps?

ANSWER: There are no records from which this information can be readily obtained.

20. QUESTION: How many members of the class actually had their food stamp benefits changed for reasons other than the 18% change

- a) in October, 1981?
- b) in November, 1981?
- c) in December, 1981?
- d) in January, 1982?

ANSWER: See answer to Interrogatory No. 19.

25. QUESTION: When was the data collected upon which the 18% earned income disregard terminations and reductions of food stamps were made?

ANSWER: The data was collected at various times from the last period of recertification for each household.

26. QUESTION: What was the cut-off date for getting new data concerning changes in a food stamp household's income, expenses, deductions or exclusions into the computer in order to be reflected in the December, 1981 ATP?

ANSWER: On or about November 25, 1981.

27. QUESTION: Was there any backlog or delay in processing new data concerning a food stamp household's income, expenses, deductions or exclusions and entering this data into the computer? If so, explain the nature and extent of the backlog, the reason for the backlog and what steps were taken, if any, to protect recipients from being erroneously reduced or terminated due to the Department's inability to promptly process data changes and transmit such changes to the computer.

ANSWER: There was no backlog in the Regional Data Control Unit (RDCU) and local office

entry system. There was some backlog in the MIRS state-wide earnings case system which system is not relevant to the class in this lawsuit.

30. QUESTION: State the number of class members who have contacted the Department through the local offices or otherwise for additional information or clarification regarding either of the notices at issue herein or the reductions or terminations based upon those notices. For each such contact, state the name of the recipient or his/her advocate making the contact, the name and position of the Department employee contacted in each case, the date of the contact, and how the contact was recorded.

ANSWER: There are no records from which this information can be presently obtained.

36. QUESTION: State the name, address and telephone number (if known) of each and every member of the plaintiff class in this action.

ANSWER: G.L. c. 66, §17A precludes the release of reports which contain information relating to individual food stamp households.

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DEFENDANT SPIRITO'S ANSWERS TO
PLAINTIFF'S SECOND SET OF INTERROGATORIES

4. QUESTION: Please provide the following information:
- (a) the total number of food stamp households in Massachusetts in December 1981; (b) the number of Massachusetts food stamp households with earned income in December 1981; (c) the number of households participating in the Monthly Income Reporting System (MIRS) in December 1981 which received food stamps; (f) the number of households participating in MIRS in December 1981 which were sent in late November or early December 1981 the undated notice of reduction or termination of food stamps based upon the change in the earned income disregard from 20% to 18%.

ANSWER:

- a) Approximately 190,581
- b) Approximately 19,654
- c) The answer to this interrogatory is unavailable; however in no event is the figure greater than 25,000 (the number of households participating in MIRS).
- d) No households participating in MIRS in December, 1981 were scheduled to receive the described notice; the Department is unable to determine if some MIRS' households received the notice through inadvertence or mistake.

5. QUESTION: Please state the number of food stamp households who received the December 26, 1981 notice and were recertified for food stamps:

- (a) in December 1981;
- (b) in January 1982;
- (c) in February 1982;
- (d) in March 1982.

ANSWER: (a) Approximately 700
 (b) Approximately 3200
 (c) Approximately 4638
 (d) Approximately 2474

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**DEFENDANT SPIRITO'S SUPPLEMENTAL ANSWERS
TO PLAINTIFFS' SECOND SET OF INTERROGATORIES**

QUESTION: Please provide the following information:

(c) the number of households participating in the Monthly Income Reporting System (MIRS) in December 1981 which received food stamps; (f) the number of households participating in MIRS in December 1981 which were sent in late November or early December 1981 the updated notice of reduction or termination of food stamps based upon the change in the earned income disregard from 20% to 18%.

ANSWER: (c) 9,191

(f) 9,191

Insofar as this supplemental answer differs from the previous answer given, the supplemental answer controls.

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AFFIDAVIT OF JAMES W. GLEICH

I, James W. Gleich, being duly sworn, depose and say:

1. Since September 1979, I have been the Director of the Monthly Income Reporting System (MIRS) for the Department of Public Welfare (DPW).

2. My principal duties and responsibilities include overseeing the general design, development, and implementation of the MIRS project. I supervise approximately 120 people. I report directly to Associate Commissioner James Hall.

3. The MIRS project became operational in November 1980 as a federally-funded pilot program. At that time, about 1,000 AFDC cases were converted to the MIRS project. All of these cases were serviced by either the Adams Street or the Roxbury Crossing Welfare Service Office (WSO).

4. The MIRS Project is designed to work as follows:

a. A monthly report is issued to AFDC recipients with both earned and unearned reportable income.

b. AFDC recipients return these reports to the Department of Public Welfare, providing information relative to their income and other eligibility factors.

c. This information is key entered into computer terminals, and the system calculates recipients' AFDC grant amounts and Food Stamp allotments, if any.

d. The MIRS computer generates notices to recipients informing them of any change in either their AFDC or Food Stamp benefits.

e. Updated AFDC and Food Stamp benefit amounts are transferred via magnetic tape to the state computer system operated by the Bureau of Systems Operations (BSO). The state computer then issues AFDC checks and Authorizations to Participate (ATPs) in the Food Stamp Program.

5. In September 1981, the MIRS project was greatly modified to implement federally-mandated policy changes affecting the AFDC and Food Stamp programs. Effective October 1, 1981, all AFDC cases throughout Massachusetts with earned income (approximately 23,000 households) were converted to the MIRS project. This conversion process more than doubled both the number of cases and the transaction load handled by the MIRS computer system.

6. On October 1, 1981, there was no data entry backlog in the MIRS project. All data worksheets returned from local Welfare Services Offices (WSOs) had been key punched by this date.

7. During the months of October and November 1981, a data entry backlog developed within the MIRS project. Approximately one-third of all data entry scheduled for October was processed during that month. Thus, during the month of November, it was necessary to process two-thirds of October's data plus all data scheduled for November.

8. To the best of my knowledge, this data entry backlog was primarily caused by the following factors:

a. There were serious staffing shortages within the MIRS project during October and November 1981. As more staff was added to the MIRS project, this data entry backlog steadily decreased.

b. The federally-mandated changes effective October 1, 1981 required all AFDC recipients to have their eligibility redetermined and their grant amounts recalculated. This process was time-consuming because all worker-submitted documents had to be reviewed prior to data entry. Similarly all computer-generated notices sent to recipients informing them of any change in AFDC or Food Stamp benefits had to be examined for accuracy of certification dates, calculations, and grant amounts.

c. These federal changes of October 1, 1981 had a delayed impact upon thousands of AFDC households. For

example, changes in Food Stamp allotments often did not take place until the following month, and the new data could not be immediately key entered into the MIRS computer.

d. The MIRS project initially experienced difficulties with opening new cases. In October and November 1981, this process took four days. Systems modifications made in December 1981 reduced this opening period to one day.

9. By the last week of December 1981, there was no data entry backlog in the MIRS project.

10. Currently, there are approximately 32,000 AFDC cases maintained in the Monthly Reporting System.

11. In order to prevent further data entry backlogs in the MIRS project and to ensure that recipients get their AFDC checks and Food Stamps in a timely manner, the following steps have been taken:

a. When a case is reported as experiencing problems, the MIRS unit reruns its files against the master file used by BSO to issue checks and ATPs. The MIRS computer system updates the BSO master file on a daily basis.

b. Each WSO has at least two people who can verify the correctness of MIRS-processed forms. If a mistake in an AFDC grant amount or a Food Stamp allotment is uncovered, corrective action can be instituted by telephone the same day. In most instances, corrections can be completed within one day.

c. The MIRS Project has adopted a team approach to data processing. Teams of up to six people, organized by WSO grouping, screen all documents prior to key entry. After key entry, the teams study all transactions and notices generated by the computer system. If a problem is encountered, the teams research its source and initiate corrective action. These teams also study two daily error reports: one which is generated by the MIRS computer and one which interfaces with the master file housed in the BSO computer.

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REPORT OF JEANNE S. CHALL AND SUE S. CONARD

This paper reports an analysis of the readability level of Food Stamp Notices (Page One — Gold Card and Page Two — Orange Card), issued by the Massachusetts Department of Public Welfare. This analysis was requested by Steven A. Hitov, Western Massachusetts Legal Services Incorporated, Springfield Massachusetts to determine the difficulty of the notices and whether they can be read and understood by Food Stamp recipients, a population whose reading ability is estimated to be at a maximum level of approximately eighth grade.

To predict difficulty in written text, readability formulas are most frequently used. These statistical techniques provide an objective measure of linguistic complexity through counts of elements found in the text. Most current readability formulas use two factors; a measure of vocabulary that relates to semantic aspects of difficulty and a measure of sentence complexity that relates to syntactic aspects of difficulty. Readability formulas do not purport to measure all aspects of difficulty, particularly the more qualitative ones.

Generally, readability formulas predict difficulty in terms of reading grade levels. Grade level, in this case, refers to a reading grade equivalent in terms of standardized reading test scores, not to a school grade placement. For example, a grade level of 7.0 for most formulas means that individuals who read on a seventh grade level as determined by a standardized reading test can be expected to read and understand the material with about 75 per cent accuracy on a multiple choice test or 40 per cent accuracy on a cloze test.

Method of Analysis

The readability (difficulty) levels of the two pages were assessed using two readability measures — the Dale-Chall Formula and the Fry Graph. Both these measures are suitable

for materials that cover a wide range of difficulty. The range of the Dale Chall Formula is from 4th grade to 16 + , college graduate level, and the Fry Graph approximate grade level range is from 1st to 17 + , also college graduate level.

A Dale-Chall formula raw score is obtained by calculating the average sentence length in samples of approximately 100 words, ending with complete sentences and the percentage of words not found on the Dale List of 3,000 Words,* a list of words known to fourth grade school students. With few exceptions, such as abbreviations and titles, unfamiliar words are counted each time they appear in a sample. Proper names and numerals are counted familiar. Raw scores are then converted to corrected grade levels expressed in terms of grade bands such as 5-6, 7-8, or 9-10.

Fry Graph* scores are obtained by counting the number of sentences in exact 100 word samples, estimating remaining sentences to the nearest tenth, and counting the number of syllables in each word of the sample. Included in the syllable count are proper names and numerals. Using the averages of these two counts for the samples taken, approximate grade levels can be read directly from the graph.

Following the readability analyses, more qualitative evaluations of the vocabulary, the sentences, and the text appearing on the food stamp notices are reported.

Readability Analysis of Page One — Gold Card (Table I)

Dale-Chall Formula Analysis: Three samples of approximately 100 words were selected at the beginning, near the middle, and near the end of the 404 word text of Page One. Data in Table I show that the average sentence length for the samples range from 20.6 to 23.2. The average sentence length for three samples is 21.7.

* Copies of the Dale-Chall Formula, the Dale List, and the Fry Graph are included with this report.

The percent of unfamiliar words in the three samples ranges from a low in Sample 2 of 16.38 to a high in Sample 3 of 23.30. The average per cent of unfamiliar words for the three samples is 20.1%. This figure shows that according to the Dale List of 3,000 Words, one in approximately every five words is unfamiliar.

The lowest raw score, 7.30, is found for Sample 2 and can be interpreted as somewhat above 9th grade level. The raw score for Sample 1, 7.99, is exactly between 9-10 and 11-12 grade level band raw scores and can be interpreted as high tenth or low eleventh grade level. The raw score for Sample 3, 8.31 is somewhat higher than eleventh grade level. For the three samples, the average raw score, 7.87, is very close to the upper limits of the 9-10 corrected grade level band raw score (7.9) indicating that the average grade level of this text is high tenth grade or low eleventh grade level.

Fry Graph Analysis: Three samples from Page One of exactly 100 words were analyzed by the Fry Graph. Each sample begins with the same word as do samples analyzed by the Dale-Chall Formula. Average results of the samples, shown in Table I are: number of sentences estimated to the nearest tenth — 4.6; number of syllables — 158. The intersecting point of these two figures on the graph indicates that the approximate grade level for this passage is eleventh grade.

Results of the readability analyses for Page One from the two readability measures are quite similar. In order to read and understand Page One at a generally acceptable level, individuals would need to have achieved a reading ability level as demonstrated on a standardized reading test of at least high tenth and probably eleventh grade level. To read the least difficult sample from this passage would require a reading ability of above a ninth grade level.

TABLE II

DALE-CHALL FORMULA AND FRY GRAPH READABILITY ANALYSES
of
FOOD STAMP NOTICE, PAGE TWO

SAMPLE	DALE-CHALL FORMULA ANALYSIS					FRY GRAPH ANALYSIS				
NUMBER	First Word Last Word	Number of Words In Sample	Average Sentence Length	Percent of Unfamiliar Words	Raw Score	Corrected Grade Level	First Word Last Word	Average Number of Sentences	Number of Syllables	Approximate Grade Level
1	Recent Actions	103	17.2	26.21	8.59	11-12	Recent Disagree	4.8	174	
2	If Office	120	20.0	20.08	7.98	9-10 + If	If If	4.0	149	
Average for Two Samples										
					8.29	11-12		4.4	161.5	12

Readability Analysis of Page Two — Orange Card (Table II)

Dale-Chall Formula Analysis: Two samples of approximately 100 words were selected from the 284 words in the text of Page Two, one at the beginning and the other toward the end. Data in Table II show that the average sentence lengths for these two samples are 17.16 and 24.0. The sentence length average for Sample 1 is somewhat low because the reference (Food Stamp Manual Citation: 106 Cmr:364.400) was counted as a sentence. Overall, the average sentence length for Page Two is 20.58.

The percentages of unfamiliar words in the two samples are 26.21 and 20.0, an average of 23.10. Thus, one in between four or five words in this passage is unfamiliar according to the Dale List of 3,000 Words.

The raw score for Sample 1 is 8.59 and can be interpreted as low twelfth grade level. The raw score for Sample 2, 7.98, is between the 9-10 and 11-12 grade level bands and can be interpreted as high tenth grade or low eleventh grade level. For the two samples, the average raw score is 8.29, indicating that the average grade level of this passage is above an eleventh grade reading level.

Fry Graph Analysis: Two samples of text from Page Two of exactly 100 words were analyzed by the Fry Graph. Samples begin with the same word as the samples analyzed by the Dale-Chall Formula. The average results of the two samples, shown in Table II, are: number of sentences estimated to the nearest tenth — 4.4; number of syllables 161.5. The intersecting point of these two figures on the graph indicates that the approximate grade level for Page Two is twelfth grade.

Results of the readability analyses of Page Two using two readability measures are relatively similar — Dale-Chall Corrected Grade Level of over eleventh grade and Fry Graph Approximate Grade Level of twelfth grade. The slightly higher Fry Graph score probably comes from the fact that the Graph counts one syllable for each number in the text. Thus,

the inclusion of the reference in the Food Stamp manual mentioned on the previous page accounted for twelve additional syllables. The Dale-Chall Formula, on the other hand, counts numbers as familiar. These analyses of Page Two indicate that to read and understand the text included on this page at a generally accepted level would require a reading ability level as demonstrated on a standardized reading test equal to at least an eleventh grade and more than likely a twelfth grade level. To read the least difficult sample from this passage would require a reading ability of high tenth or low eleventh grade level.

Qualitative Analysis of Vocabulary

To further evaluate the vocabulary used in the text of the Food Stamp Notices, a more qualitative analysis was made for the samples from Page One and Page Two used in the readability analyses.

Table III shows words from each sample that are unfamiliar according to the Dale List of 3,000 Words. Words are listed in the order of their appearance in the samples. Unfamiliar words were differentiated by whether they seem to be critical to understanding of the topic presented or whether they could be replaced by easier, more familiar words and still convey a similar meaning. The percentages of words judged to be critical and non-critical within each sample is also shown.

As can be seen in Table III, three of the five samples contain a greater percentage of non-critical words than critical words. One sample — Sample 2, Page Two — has an equal percentage of critical and non-critical words. One sample — Sample 2, Page One has a greater percentage of critical words than non-critical words. It is interesting that this sample has the lowest readability score of the five samples analyzed and the second least difficult sample is Sample 2, Page Two, mentioned above.

TABLE III

WORDS ON FOOD STAMP NOTICE, PAGES ONE AND TWO CONSIDERED UNFAMILIAR BY THE DALE LIST OF 3,000 WORDS
SUBJECTIVE CLASSIFICATIONS OF PROBABLE CRITICALNESS TO THE SUBJECT

Page of Notice and Sample Number	Unfamiliar Words Probably Critical to Understanding the Subject	Percent of Unf. Words	Unfamiliar Words Probably Non-Critical to Understanding the Subject	Percent of Unf. Words
PAGE ONE				
Sample 1	ATP: benefit, appeal, appeal, benefits, appeal	27.3%	information, specific, information, reflected, reduction, concerning, reduction, prior, prior, reduction, result, omission, extended, reinstated, prior, regarding	72.7%
Sample 2	ATP, benefits, appeal, benefits, appealed, appeal, benefits, appeal, appeal, appealed, appeal	57.9%	terminated, effective, prior, basis, prior, continued, reinstated, contained	42.1%
Sample 3	ATP, benefits, benefit, certification, recertified, appeal, Department's, benefits, appeal	37.5%	reflects, reduction, resulting, effective, supplement, prior, notified, period, action, situation, action, entitled, continuation, pending, refers	62.5%
PAGE TWO				
Sample 1	Federal, benefits, per cent, household's(?) benefits, Federal, benefits, benefits, manual, citation, CMR	45.8%	recent, program accordance, deduction, lowered, reduction portion, determining, eligibility, result, reduced, eligible, terminated	54.2%
Sample 2	appeal, denied, Department, benefits, appeal, appeal, request, denied, request, Division, benefits, Welfare	50.0%	recover, process, action, within, enclosed, pre-printed, concerning, correctness, computed, process, contact, local	50.0%

Another interesting aspect of this qualitative analysis of vocabulary is that words judged critical to the meaning of the Food Stamp Notices are often the same for all samples. Overall, sixteen words, or derivations of these sixteen words, make up the total judged as critical to understanding meaning.

Some words that appear on Page One and Page Two of the Food Stamp Notices, although included on the Dale List and thus counted familiar, are used in this text to represent concepts that may be quite different from their more common meanings and therefore, may pose additional difficulty for the average reader. Examples of such words are *heard*, *earned*, *right*, *file*, *fair*, and *hearing*. Considering that these words seem to be used in a technical, even legalistic way, their appearance seems to suggest that the Food Stamp Notices may be even more difficult than the readability formulas indicate. Furthermore, the qualitative analysis of unfamiliar words suggests that a great contribution to difficulty comes from words that might possibly be replaced with more familiar, less difficult words. Thus, the difficulty level of the Food Stamp Notices may be lessened without loss of meaning. For example, the following sentence from Page Two contains eight unfamiliar words:

"If you have questions concerning the *correctness* of your benefits *computation* or the fair hearing *process*, contact your *local welfare* office."

One wonders if the sentence might not also read:

"If you have any questions about how your *benefits* are figured or about asking for a fair hearing, be sure to call or write the *Welfare* Office closest to your home."

Qualitative Comparison of Sentence Length

Average sentence length in the three samples from Page One were 20.6, 21.4, and 23.2, and in the two samples from Page Two, 17.2 and 24.0. For Page One, the average sentence length is 21.7 and for Page Two, 20.58. To get a feeling of

TABLE IV

COMPARISON OF AVERAGE SENTENCE LENGTH
of
FOOD STAMP NOTICES, PAGE ONE and PAGE TWO
and
PASSAGES OF KNOWN DIFFICULTY
(Scales for Reading Assessment)

AVERAGE SENTENCE LENGTH FOR SCALES			AVERAGE SENTENCE LENGTH FOR FOOD STAMP NOTICES		
Scales	7-8 Grade Level	9-10 Grade Level	PAGE ONE	A.S.L.	PAGE TWO A.S.L.
Literature	15.6	18.1	Sample 1	21.4	Sample 1 17.16
Astronomy	16.7	20.7	Sample 2	23.2	Sample 2 24.0
Biology	16.5	20.9	Sample 3	20.6	
Narrative History	19.3	24.7			
Expository History	16.4	20.4			
Average	16.9	20.5		21.7	22.3

the difficulty of sentences of this length, it seems helpful to compare them with sentence length in passages whose difficulty levels have been tested. Table IV presents a comparison between the average sentence length of the Food Stamp Notices and the Scales for Reading Assessment, a set of passages from five subject areas representing a gradation in difficulty. In Table IV, it can be seen that for the Scales, the average sentence length for passages known to be at seventh to eighth grade reading level is 16.9; for passages known to be at ninth to tenth grade reading level, the average sentence length is 20.5. The average sentence lengths for samples from Page One and Page Two are five to six words longer than 7th to 8th grade passages and about two words longer than 9th to 10th grade passages. This data seems to support the earlier readability analyses that the Food Stamp Notices are written at above a tenth grade reading level.

Many sentences in the Food Stamp Notices are quite long. Take, for example, the following:

"If you have already appealed on the basis of the prior notice, that appeal will be heard and your Food Stamp benefits will be continued at the reinstated level until the appeal is decided, and you need not file a second appeal at this time."

In this sentence, taken from Page One, are forty-five words. This sentence could easily be written in at least three sentences without losing meaning or continuity, or even changing words.

"If you have already appealed on the basis of the prior notice, that appeal will be heard. Until the appeal is decided, your Food Stamp benefits will be continued at the reinstated level. You do not need to file a second appeal at this time."

Qualitative Impressions of the Food Stamp Notices

Earlier in this paper, it was pointed out that readability formulas do not account for all aspects of difficulty. One of these aspects is organization — at the level of a book, chapters in a

book, paragraphs, or sentences. Books, chapters, and paragraphs that are well organized present information in a manner that can be logically followed. For example, paragraphs usually present topic sentences and related information in the same or subsequent paragraphs. Such organization does not consistently appear on the notices in question. To illustrate, essentially the same information is given in Paragraph 1 and again, in Paragraph 5 of Page One.

Furthermore, the fact that December Food Stamp benefits will remain the same for everyone, no matter if a December ATP was or was not received, is difficult to ascertain for references to this information are scattered through the text. References on Page One to information on Page Two further detract from a logical organization of the information presented. It seems that the contents of the two cards could be combined. One might even consider placing the complete message in English on one card — back and front — and the Spanish version on another, back and front.

Overall, information in the Food Stamp Notices is very difficult to follow. A great many conditional statements are presented that would make extremely high processing demands on a reader. Although some information is repeated, it also seems that other necessary information is omitted. For example, it does not seem clear whether those who did not receive a December ATP and those whose certification ends December 31, 1981 are the same or different groups. Are the ending of a certification period and the termination of benefits the same?

Furthermore, there seems to be conflicting information presented in the text of these notices. The entire text is about reductions or terminations of Food Stamp benefits. Yet, the final statement on Page One states that "this is *not* an additional reduction in your Food Stamp benefit amount."

The text also goes to great length to give the dates when appeals may be made. It seems that it would be easier to give a

specific date such as January 5, 1982, than to say "within 10 days of the date shown on this card". Does this mean including this date or ten days after this date? Specifics of appeals and consequences of appeals are discussed in detail. The text says that you may not appeal after ninety days beyond the date on the card, which one assumes is March 26, 1982. Yet, information is then found stating that you can appeal *at any time*, if you think you are not receiving the food stamps that you should.

Finally, in reading the Food Stamp notices, one gets the impression of reading a legal document. The tone, style, and linguistic structure of the text give a feeling to this writing similar to that of an insurance policy or a mortgage contract. It would seem unlikely that the population, for whom information about Food Stamp benefits is imperative, would have acquired the skills necessary to read and understand this specialized, technical text.

THE LITERACY OF WELFARE CLIENTS

MARC BENDICK, JR., and MARIO G. CANTU, *Urban Institute*

About 75 percent of the U.S. poverty population can offer reading skills at no higher than an eighth-grade level. The procedures and documents of many public welfare agencies require far higher levels of skill, in a sample of eighty-one documents only 11 percent were judged accessible to those with eighth-grade skills. This mismatch contributes to high administrative error rates as well as hampering enrollment by clients and equitable distribution of benefits. More realistic literacy requirements in written materials and more active outreach in agency procedures would benefit both clients and agencies.

Low-income persons in the United States may be eligible for benefits under many needs-tested assistance programs, including AFDC, food stamps, Supplemental Security Income (SSI), general assistance, Medicaid, and Section 8 rent supplements. However, individuals receive such benefits only after completing a process of enrollment and eligibility determination and while continuing to comply with the process of periodic redetermination of eligibility. These processes involve literacy skills—reading and writing—in completing forms, providing documentary proof of eligibility, comprehending explanatory brochures, and complying with written notices. Yet the relationship between low income and lack of education is well known. Furthermore, some persons eligible for public assistance may be in that situation precisely because of their inability to deal successfully with such processes—for example, in applying for jobs. Hence the questions arise: What literacy skills can be assumed of welfare clients? To what extent do current agency administrative procedures accommodate to limited literacy? And what consequences arise from mismatches between the skill levels which agencies require and those which clients can supply?

These questions are the subject of this study: Section I summarizes what is known about functional literacy levels among potential welfare clients, reflecting the influence of low educational achievement, age, and foreign-language background. Section II presents data on reading-skill levels required to deal with the forms and brochures in six assistance programs. Section III then examines the consequences of unrealistic literacy requirements on agency performance and client service. Finally, Section IV discusses some alterations in agency practices suggested by these findings.

I. THE LITERACY OF THE POVERTY POPULATION

Throughout this paper, we use the U.S. poverty population as a proxy for the client population of public assistance programs. We do so because we wish not to confine attention to any particular program but, rather, to include the whole range of agencies and procedures with which persons seeking assistance might have to deal. We do so also because data on the literacy of the client population of public assistance programs are scarce, making census data on the poverty population an important source of information.

Table 1 indicates the number of school years completed by heads of families in poverty in the United States in 1970. Fifty-one percent of the families were headed by persons who had completed eight years of school or less, another 40 percent

Table 1

YEARS OF SCHOOL COMPLETED BY HEADS OF FAMILY FOR FAMILIES IN POVERTY, 1970.

Years of School Completed by Family Head	Percentage of Families in Poverty	Cumulative Percentage of Families in Poverty
Fewer than eight	35	35
Elementary school graduate	16	51
One to three years of high school	22	73
High School graduate	18	91
One to three years of college	6	97
College graduate	3	100
Total	100	100

were headed by persons who had completed some years of high school or who had graduated from high school, and 10 percent were headed by persons with at least some college education. The median years of school completed was 8.9.

These data present an overestimate of the actual educational skill levels which the poverty population possesses, however. This is true because persons who eventually become school dropouts tend to fall behind their classmates in educational achievement prior to dropping out: the average person who has completed only eleven years of school cannot perform at an eleventh-grade level.

Table 2 summarizes the results of five studies of educational achievement which illustrates this pattern.² Let us focus on the Gates Reading Test study (fourth row of the table) as an example. This study estimated that, among the tenth-grade students tested, those students who eventually graduated from high school possessed reading skills of approximately tenth-grade level, but those students who subsequently did not graduate lagged 1.8 years behind in reading skills: that is, they could read at only a little better than an eighth-grade level. The five studies together indicate that eventual dropouts are

Table 2

SKILL-LEVEL DIFFERENCES BETWEEN SCHOOL DROPOUTS AND EVENTUAL HIGH SCHOOL GRADUATES

Study	Skills Examined	Grade Level of Study Population	Skill Differ. (in School Yrs.) between Even- tual Dropouts and Eventual Graduates
Iowa Test of Education Development, 1950-52.	General educational development	9	1.6
Project Talent, 1960	Reading comprehension	9	1.5
Bloomington, Minnesota, 1961	General educational	9	2.4
Gates Reading Test, 1966	Reading	10	1.8
Health Examination Survey, 1966	Reading	12	1.9

more than one year behind in the ninth grade, nearly two years behind in the tenth grade, and more than four years behind in the twelfth grade. Hence, the average person who never graduated from high school should not be assumed to possess more than an eighth-grade literacy-skill level.

With this rule of thumb, we can now reexamine the data in table I to produce a more realistic estimate of poverty-population literacy than is provided by school-achievement data alone. Table I indicates that 35 percent of poverty-family heads never completed eight grades of school, and an additional 16 percent only completed eight. To this 51 percent of family heads who clearly possess no more than eighth-grade skills ($35 + 16$ percent), we should add the 22 percent who completed from one to three years of high school. This produces an estimate that 73 percent—almost exactly three-quarters—of all heads of families in poverty should be assumed to offer at most an eighth-grade reading-skill level. We shall use this level for the remainder of this paper as an upper limit of what can plausibly be assumed for the majority of welfare clients.

Those few studies which test the literacy skills of actual public assistance recipients concur with these census-based estimates. A study of 680 recipients of AFDC and general assistance was conducted in the Woodlawn area of Chicago in 1962. It found that 42 percent of interviewees claimed to have completed eight grades or fewer of schooling, and an additional 45 percent claimed to have completed some high school but not to have graduated; these two categories account for 87 percent of recipients. Furthermore, reading-skill tests showed that those who had claimed schooling of eight years possessed actual reading skills corresponding to 5.3 years of school, while those who claimed twelve years of school actually read at a level corresponding to 7.5 years of school. A parallel study of 777 recipients in East St. Louis, Illinois, the following year found 60 percent of respondents claiming eight years of

schooling or less and an additional 30 percent claiming some high school but not graduation; this study also confirmed that the actual reading-skill level of this group—90 percent of recipients surveyed—fell behind their claimed years of school completed by as much as 4.3 year-equivalents. Thus, even supposed high school graduates were functioning at lower than an eighth-grade level.

Literacy limitations of welfare clients based on low educational achievement are often compounded by foreign-language problems. As estimated in the Current Population Survey of July 1975, 14.5 million persons in the United States aged nineteen and over live in households in which languages other than English are spoken and speak languages other than English as either their first or second language. This represents approximately 10 percent of the total U.S. population aged nineteen and over and may be assumed to be at least that high a proportion of the poverty population and welfare clientele.

A second element compounding the relationship between literacy and poverty is age. Persons aged sixty-five and over comprise about 25 percent of the U.S. poverty population and

Table 3

YEARS OF SCHOOL COMPLETED BY HEADS OF FAMILIES IN POVERTY, BY AGE, 1970

YEARS OF SCHOOL COMPLETED BY FAMILY HEAD	FAMILIES WITH HEAD AGED 25-64		FAMILIES WITH HEAD 65 OR OLDER	
	Cumulative		Cumulative	
	%	%	%	%
Fewer than eight.....	32	32	54	54
Elementary school graduate	14	46	23	77
One to three years of high school.	24	70	11	88
High school graduate.....	21	91	7	95
One to three years of college.....	5	96	3	98
College graduate.....	4	100	2	100
Total.....	100	100	100	100

SOURCE—see table I n

therefore deserve special attention. Table 3 displays data on the years of school completed by persons who are heads of families in poverty, separately for persons under age 65 and those above. Fifty-four percent of the elderly poor-family heads had fewer than eight years of school, an additional 23 percent were elementary school graduates, and a further 11 percent had some high school education but had not graduated. This represents 88 percent of elderly-poor family heads who, according to the adjustment discussed in table 2 should be expected to have available at most an eighth-grade reading level.

II. LITERACY REQUIREMENTS OF PUBLIC PROGRAMS

Having estimated welfare clients' available literacy skills, we can now compare these with the skill levels required for claiming public assistance. Virtually the only formal study of this subject is a recent one of the readability of twenty forms and brochures utilized by the Illinois Department of Public Aid. In that study, literacy requirements were estimated using the Dale-Chall formula, which takes account of average sentence length and the proportion of words in a passage which are to be found on a list of 3,000 familiar words.

The results of that study are summarized in the first row of table 4. There we see that 50 percent of the brochures and forms which Illinois clients are expected to read actually require the literacy skills of either a college graduate or someone who has attended college for at least some time. Only 15 percent of the documents were accessible.

To expand the sample available from the Illinois study, we obtained client documents from five additional public aid agencies or programs; the public assistance agencies in the District of Columbia, Maryland, and Virginia (covering AFDC, general assistance, food stamps, and Medicaid), the Social Security Administration (covering SSI), and local housing authorities in Atlanta, San Antonio, and Cambridge, Massachusetts, administering the Section 8 rent-supplement

program. We included in our sample only documents which clients are normally expected to read or fill out without assistance by agency caseworkers. Each document was evaluated for readability using the Dale-Chall formula, with the results displayed in the remaining rows of table 4.

The pattern in the results is the same as that indicated by the Illinois data alone: The documents require substantially higher reading levels than clients possess. When all eighty-one documents from all six programs and agencies are considered together, 32 percent of the documents require some college or college-graduate reading levels, and only 11 percent are accessible to those at an eighth-grade reading level. The most accessible program in the sample, SSI, still makes only 22 percent of its documents available to eighth-grade readers. The least accessible program is Section 8 rent supplements, with all its documents requiring the reading skills of at least a high school graduate.

Perhaps the most vivid sense of the situation faced by low-literacy clients can be given by passages from the sampled documents themselves. An applicant for Section 8 rent supplements in San Antonio, for example, would be given the following written explanations of a major aspect of the way his rent subsidy is calculated:

As an incentive to the Family to find the most economical housing suitable to its needs and subject to the other provisions of this paragraph (b), if the Family selects a dwelling unit for which the proposed monthly lease rental, plus any applicable allowances, is below the applicable Fair Market Rent, the Family will be given a rent credit by reduction in its Gross Family Contribution. The amount of this credit will be that percentage of the Gross Family Contribution which Rent Saving is of the Fair Market Rent. The Rent Saving is the amount by which the Fair Market Rent exceeds the monthly lease rental (plus any applicable allowance) approved by the Agency.

A Medicaid client in the District of Columbia would have his eligibility explained to him as follows:

The State Plan permits eligibility to be retroactive three months prior to the month of application if you were eligible on the date you received medical care or service. . . . Care card holders may only attend medical facilities of the D.C Department of Human Resources or be hospitalized in specific hospitals with whom the District government has a contractual agreement.

Finally, social service clients in Maryland are informed that

The social service program will not, directly or through contractual or other arrangements, on the grounds of race, color or national origin . . . treat an individual differently from others in determining whether he satisfies any eligibility or other requirement or condition . . . [or] deny any individual opportunity to participate in any program, through the provision of services or otherwise; or afford him opportunity to do so which is different from that afforded others under the program.

The forms from which the first and last quotations are drawn require the skills of a college graduate, while the second passage is from a form requiring the skill level of a person with some college education.

III. CONSEQUENCES OF THE MISMATCH

What are the consequences of a mismatch between welfare clients' ability to read and agencies demands for client literacy? We speculate that it contributes to at least three undesirable program outcomes: discouragement from enrolling of persons eligible for benefits, inequity in the distribution of benefits among enrollees, and high agency error rates. We must characterize this contention as speculation because the actual variable which we can link to program outcomes is

client literacy levels rather than the gap between client literacy and agency requirements per se. We therefore are assuming that low client literacy levels correspond (at least approximately) to a large gap. While the evidence in table 4 seems to support this assumption by showing that the phenomenon of mismatch is widespread, we must be careful to note this link in the argument.

Let us begin with the consequences of the literacy gap for agency administrative orderliness. In a recent study of the quality control system at AFDC, Bendick and his colleagues found a substantial relationship between agency errors in eligibility determination and benefit computation and the years of school completed by AFDC clients. Nationwide in 1970, AFDC clients' median years of schooling was 10.8 years. It was estimated that, for each additional year of schooling of the average client, the proportion of AFDC cases with errors would drop three-quarters of a percentage point. The state with the highest median AFDC recipient education was New Hampshire, with 12.6 years; if the national average client educational level were as high as New Hampshire's, the national case-error would be 1.4 percentage points lower. This 1.4 percentage change would represent elimination of one error in twenty in the nation.

Of course, the educational level of recipients is not subject to change of this sort. However, we may speculate that, at least in part, the origin of errors is not low literacy skills per se; rather, it is the gap between actual client skills and agencies' expectations. To the extent that this assertion is correct, equivalent elimination of mispayments and payments to ineligible persons may be achieved by closing the gap through changes in agency documents and procedures.

At the opposite end of the spectrum from the problem of erroneous payments to persons not eligible for benefits is that failure of persons who are eligible to enroll for benefits. Inability to read posters and brochures informing them of the

availability of benefits may screen out potential recipients at the very first step of the enrollment process. One piece of evidence suggesting that this occurs is provided by a survey of 156 heads of households in low-income neighborhoods of Baltimore in 1964. These persons, who had never received public assistance, were asked if they knew the agency name or the location where a needy person could receive "welfare money." Of those persons who were high school graduates, 88 percent knew the correct answer to the question, while of those who had eight years or fewer of education only 60 percent knew. This pattern holds even when income and thus eligibility for benefits is controlled for.

After a client has learned of a program and has applied for benefits, the next stage at which a literacy mismatch may interfere is in the processing of an application. In the study of AFDC quality control cited previously, an index was created to represent the procedural accessibility of AFDC benefits to applicants. It incorporated four measures of accessibility: the proportion of AFDC applications denied for failure to comply with agency procedures, the proportion of ongoing cases terminated for failure to comply with agency procedures, the proportion of ongoing cases receiving an erroneously low benefit payment, and the proportion of applications received during a calendar quarter for which approval or disapproval was delayed beyond the end of the quarter. Drawing on state data for each of the fifty states and the District of Columbia in the years 1974-76, Bendick and his colleagues found that the lower the average educational levels of AFDC clients, the lower was the index of accessibility; for each decrease of one year of schooling that the average client in a state possessed, the state's accessibility index decreased 2 percent. Similarly, the higher proportion of Spanish-speaking clients in a state, the lower its accessibility; for each additional percent of the state's population which was of Spanish origin, the state's accessibility index decreased 0.7 percent. Thus, assuming that

a low educational level of clients and non-English-speaking clients corresponds to a greater gap between clients' literacy skills and agencies' requirements, we can conclude that payment delays, erroneously low payments, and payment denials to those entitled to them increase as the literacy mismatch increases.

To the extent that the literacy-skill gap screens out a disproportionate number of lowest-educated persons at the information and application stage, and to the extent that lowest education is associated with lowest income, then the literacy-skill gap contributes to perverse distribution of benefits; the more needy a potential recipient, the less likely he is to receive benefits. This inequitable pattern may be reinforced by the effect of the literacy gap on benefit decisions by agency caseworkers after a case is accepted. A study of the experiences of sixty-eight female AFDC clients in New York City illustrates the phenomenon. That study examined the proportion of caseworkers' discretionary case decisions (for example, granting special needs allowances or waiving documentary proof of claims) which had an outcome favorable to clients; it then related those proportions to various indicators of clients' "bureaucratic competence." The results are summarized in table 5. On five different measures of bureaucratic competence—years of schooling completed, experience in occupations requiring literacy skills, experience in filling out income tax forms, and two estimates of evidence of understanding bureaucratic vocabulary—the pattern was the same: The more bureaucratic and literacy skills the client possessed, the more likely were decisions to be made favorable to the client. Higher benefits and easier access to benefits then accrue not to the most needy clients but to the most adept, who are often the least needy. Only a literate minority of welfare clients can effectively demand their full benefits in an environment where agency processing requires high levels of literacy.

IV. CLOSING THE LITERACY GAP

Several approaches might be used to close the gap between client literacy skills and agency requirements.

The most straightforward of these is for agencies to rewrite their forms and brochures. It would seem that an eighth-grade reading level should be the upper limit to what the majority of clients can be expected to comprehend. The Dale-Chall test can easily be applied by agency personnel to evaluate documents for vocabulary and sentence complexity. Type size and page format are also important, particularly for programs with elderly or disabled clients.

Redesign of documents should be accompanied by re-examination of agency procedures. Where possible, written notices and brochures might be replaced by oral interviews. Outreach efforts to recruit potential applicants should not rely heavily on written posters or brochures. Paraprofessional client-advocacy workers might be available to all clients to provide counseling and assistance in the application process.

In the longer run, consideration might also be given to the simplification of the programs themselves. In many cases, the complexity of questions and explanations simply reflects complexities of program design. Concern with accurately targeting benefits to the "truly needy" by detailed, sophisticated eligibility rules must be counterbalanced by recognition of the tendency of those same complex eligibility rules to screen out persons of high need but low literacy.

In the final analysis, however, the solution may be with clients rather than with agencies. Just as illiteracy hampers clients in the public welfare process, so it handicaps them in many aspects of their lives—as workers, consumers, and citizens. The response of Cook County to the findings of their client literacy study cited in the first section of this essay was to establish a program of mandatory literacy training for nonliterate clients. In 1963, this program enrolled more than 8,000 persons. By 1975, forty-three states were funding some

form of education and training under Title XX social services, enrolling 197,000 persons. This approach might be expanded by such means as adding literacy training to the set of Title XX services which states are required to offer to public assistance clients. Agencies (through lower error rates), clients, persons currently unable to become clients, and society at large all stand to gain from such investment.

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FSP-902 REGION 07 WSU 314 SUCWORKER 00601 FOOD STAMPS ATP ISSUANCE UPDATE LISTING REPORT FOR 11/25/81

CAT	SSN	NAME	STREET	RA CE MM	COUP OLD NEW	EARNED	UNEARN	CHILU DASDI	CARE	SHELTR	UTILITY	UT CERT LD BEGIN	DATES END	MED EXP LD	ERR LD	APL	
9				5 02	094 094	.00	312.50	.00	.00	300.00	.00	1 810801	811031	000.00	B	R	
9				5 04	075 075	.00	727.94	.00	.00	300.00	379.00	2 811201	811231	000.00	B	R	
9				5 01	019 019	.00	371.00	.00	.00	142.44	358.00	2 811201	820228	000.00	B	R	
9				5 01	059 059	.00	322.47	.00	.00	49.00	270.00	2 811001	811231	000.00	2	B	R
9				3 01	059 059	150.00	.00	.00	.00	.00	.00	0 810901	811031	000.00	B	R	
9				4 04	156 156	43.33	422.52	.00	.00	135.00	270.00	2 811001	811231	000.00	B	R	
9				5 01	010 010	.00	333.00	.00	.00	53.63	105.00	2 810801	811031	000.00	B		
9				5 02	054 054	.00	140.52	201.40	.00	65.00	193.00	2 811001	820930	000.00	2	B	R
9				1 02	073 073	.00	382.50	.00	.00	202.00	236.00	2 810901	820531	000.00	B	R	
9				3 05	170 170	.00	444.00	.00	.00	.00	105.00	2 810801	811031	000.00	B		
9				5 06	257 257	43.33	705.19	.00	.00	300.00	358.00	2 811201	820228	000.00	B	R	
9				2 03	081 081	.00	541.62	.00	.00	187.21	356.00	2 811201	820228	000.00	B	R	
9				4 01	070 070	.00	74.01	257.70	.00	235.48	276.00	2 811001	820430	000.00	2	B	R
9				5 02	043 043	.00	368.44	.00	.00	90.00	12.00	4 811101	820131	000.00	2	B	R
9				2 01	023 023	.00	277.00	.00	.00	26.47	105.00	2 810801	811031	000.00	B		
9				5 02	050 050	.00	.00	350.40	.00	20.80	117.00	2 810601	811130	000.00	3	B	
9				5 03	113 113	.00	433.33	.00	.00	167.25	270.00	2 811001	811231	000.00	B	R	
9				2 02	040 040	.00	73.55	476.30	.00	132.33	270.00	2 811001	811231	000.00	3	B	R
9				5 04	123 123	.00	.00	562.50	.00	242.83	105.00	2 810801	811031	000.00	3	B	
9				5 01	034 034	.00	83.00	227.00	.00	100.00	117.00	2 810601	811130	000.00	3	B	
9				2 04	127 127	.00	541.09	.00	.00	224.00	105.00	2 810801	811031	000.00	B		
9				5 03	084 084	.00	465.00	.00	.00	68.00	170.00	2 810901	811130	000.00	B		
9				5 02	035 035	.00	395.94	240.00	.00	225.00	293.00	2 811101	820430	000.00	2	B	R
9				5 01	068 068	.00	.00	260.60	.00	27.26	226.00	2 810801	820131	000.00	3	B	
9				5 02	062 062	.00	293.60	285.30	.00	243.68	276.00	2 811001	820430	000.00	2	B	R

BEST AVAILABLE COPY

COMMONWEALTH OF MASSACHUSETTS - DEPARTMENT OF PUBLIC WELFARE PAGE 8574

FSP-902 REGION 02 WSU 116 SOCWORKER 00600 FOOD STAMPS ATP ISSUANCE UPDATE LISTING REPORT FOR 11/25/81

CAT	SSN	NAME	STREET	RA CE	COUP HH	I OLD	N NEW	C EARNED	U UNEARN	M E	CHILD CASDI	CAKE	SHELTER	UTILITY	UT CERT LD	DATES BEGIN	END	MED EXP	ERR LD	APL
9				5	06	138	131	1059.50	.00	.00	.00	500.00	358.00	2	811201	820228	000.00		C	R
9				5	01	033	031	261.97	.00	.00	.00	43.33	.00	1	810901	811031	000.00		C	R
9				5	02	010	000	.00	.00	605.50	.00	120.00	234.00	2	811001	820630	000.00	2	C	R
9				5	04	127	123	693.00	.00	.00	.00	400.00	270.00	2	810901	811130	000.00		C	
9				5	02	010	005	81.33	.00	554.92	.00	107.00	255.00	2	811001	820531	000.00	2	C	R
9				5	05	171	166	693.26	.00	.00	.00	227.00	270.00	2	811001	811231	000.00		C	R
9				5	06	211	204	1110.55	.00	.00	.00	309.24	270.00	2	811001	811231	000.00		C	R
9				5	07	064	059	612.09	444.50	.00	.00	200.00	222.00	2	810901	811231	000.00		C	R
9				5	09	265	259	973.00	.00	.00	.00	21.00	105.00	2	810801	811031	000.00		C	
9				5	03	033	026	537.07	210.65	.00	.00	118.52	222.00	2	810901	811231	000.00		C	R
9				5	03	063	056	751.29	.00	.00	.00	265.00	170.00	2	810901	811130	000.00		C	R
9				5	02	010	009	.00	.00	539.50	.00	.00	217.00	2	811001	820731	000.20	1	C	R
9				5	01	033	030	375.23	.00	.00	.00	200.00	.00	1	811001	811231	000.00		C	R
9				5	02	098	096	311.00	54.00	.00	.00	142.00	105.00	2	810801	811031	000.00		C	
9				5	02	075	072	404.96	.00	.00	.00	183.19	.00	1	810901	811130	000.00		C	R
9				5	07	167	160	1084.59	.00	.00	.00	108.32	275.00	2	811101	820131	000.00		C	R
9				5	01	026	024	432.52	.00	.00	.00	112.50	358.00	2	811201	820228	000.00		C	R
9				5	04	099	098	133.26	541.63	.00	.00	325.00	258.00	2	811101	811130	000.00		C	R
9				5	03	065	062	635.30	63.57	.00	.00	125.00	358.00	2	811201	820228	000.00		C	R
9				5	02	055	052	554.01	.00	.00	86.86	225.00	170.00	2	810901	811130	000.00		C	R
9				5	01	024	021	441.96	.00	.00	.00	165.00	170.00	2	810901	811130	000.00		C	R
9				5	01	070	069	227.00	.00	.00	.00	150.00	.00	1	811201	811231	000.00		C	R
9				5	02	044	042	331.25	210.65	.00	.00	33.00	185.00	2	811201	820131	000.00		C	R
9				2	06	164	179	865.04	.00	.00	.00	200.00	358.00	2	811201	820228	000.00		C	R
9				5	03	077	072	693.26	.00	.00	.00	76.00	358.00	2	811201	820228	000.00		C	R

AP-81-49

DATE: 12/18/81

TO: ASSISTANCE PAYMENTS STAFF

FROM: DUNCAN MACEachern, ASSISTANT COMMISSIONER,
ELIGIBILITY OPERATIONSRE: 12/1/81 Food Stamp Changes—Automatic Closings/
Reductions

On December 16, 1981 the United States District Court issued a Temporary Restraining Order (TRO) in the case of Foggs v. Block. The issue in this case is related to the computer generated notice that was sent to those cases affected by the implementation of the 130% of Gross Income Policy or the policy which changed the earned income deduction from 20% to 18%. The judge ruled that the notice was insufficient since it did not specify the date it was mailed, therefore clients could not adequately determine when the ten (10) day appeal period began. The court has ordered that all cases have their December benefits restored to the November benefit level and have a new notice sent to the Recipient. The court order does not affect any individual case actions which have been taken by local offices.

To implement the order of the court the Department is taking the following action:

- All cases closed or reduced due to the above referenced policy changes will be transferred to their November benefit levels. Cases closed will receive an ATP for the same amount as received during November, 1981. Cases which were reduced will receive a supplemental ATP which when added to their December ATP will equal their November benefit level. Cases due a supplemental ATP amount of \$1, \$3 or \$5 will receive an ATP of \$2, \$4 or \$6. These ATP's will be produced and mailed by the computer.

- All cases receiving a supplemental/restored ATP will also receive a new computer notice explaining:
 - The fact that their January benefits will be decreased/terminated as a result of the policy changes.
 - The date that they must appeal by to have their January benefits continued at the December level.
 - The fact that the cases that had previously appealed will have their appeal considered and they need not appeal again.
 - The fact that cases with an end of certification date 12/31/81 will have to be recertified and that they will not be continued at their previous level even if they appeal.

The notices will appear on two cards. The first card will contain information resulting from the court suit while the second card will be a restatement with minor modifications of the first notice. All notices will be in Spanish and English. The notices appear as Attachments 1, 2 and 3.

N.B. CASES WITH AN END OF CERTIFICATION DATE OF 10/31/81 OR 11/30/81 WILL NOT HAVE THEIR BENEFITS RESTORED NOR WILL THEY RECEIVE A NOTICE. THESE CASES SHOULD NOT HAVE RECEIVED THE ORIGINAL NOTICE AS THE ACTION RESULTING FROM THE END OF THE CERTIFICATION PERIOD SUPERCEDED THE NEW CHANGES.

- A printout will be sent to each office listing the cases that were restored or received a supplemental ATP. Included on the printout will be the amount of the new ATP.
- The client notices and ATP's are scheduled to be mailed on 12/26/81.

No further action will be required of local office staff in this matter except to respond to any recipient questions.

Clients that appeal as a result of the new notice will have an appeal scheduled and a supplemental ATP will be issued in January by a special Central Office Unit. A supplemental ATP will be issued on a monthly basis until either the appeal is heard and a decision rendered or until the end of the certification period. Local Offices will receive a list during the week of 1/11/82, or all recipients who filed a timely appeal and the amount of the supplemental ATP. The supplemental ATP's will be issued during the week of 1/11/82.

JG:kah

AP-82-3

DATE: 2/3/82

TO: ASSISTANCE PAYMENTS STAFF

FROM: DUNCAN MACEachern, ASSISTANT COMMISSIONER,
FOR FIELD OPERATIONSRE: 12/1/81 Food Stamp Program Changes — FSP-902 and
FSP-903 Reports

In generating the FSP-902 and FSP-903 Reports based on the 12/1/81 Food Stamp Program changes, problems and unforeseen situations have occurred as a result of unanticipated system modifications and court orders prompted by the *Foggs v. Block* court suit. Information and instructions regarding the consequences of the suit were contained in AP-81-49 and AP-81-50.

The purpose of this memo is to alert field staff to those identified problems with the FSP-902 and FSP-903 Reports and to explain the system which has been developed to handle households who have filed a timely appeal after receipt of the computer generated notice.

Field Staff are to resume the effort to correct cases appearing on the FSP-903 Report immediately. Instructions issued by AP-81-45 should be followed with one exception. Notification letters (Attachment #'s 5, 5A, 6 and 6A) were transmitted by AP-81-45 and were sent to clients by eligibility workers for adverse actions required by the 12/1/81 food stamp changes. *Do not use these letters under any circumstances.* All adverse actions resulting from reviews of cases listed on the FSP-903 are to be initiated using standard adverse action procedures e.g. FSNL-5. The completion date for the FSP-903 is extended to 2/19/82.

I. FSP-902 (ATP ISSUANCE UPDATE LISTING REPORT)

1. Cases terminated for Code A (130%) will reflect an end of certification date of 11/24/81. This is for your information only and requires no action.
2. Category 9 (NPA) cases whose certification period had not expired and which were terminated for Code A (130%) were originally closed *only* in section IV of the Recipient Master File. Since Section III was not closed, these cases were appearing in an active status with no Food Stamp benefits payable. The system has been corrected and cases affected in this manner have been terminated in Section III for action Reason #32. No field action is required.
3. The minimum allotment for household sizes 1 and 2 should have remained unchanged at \$10. The system incorrectly issued ATP's for some household size 2 cases in amounts less than the \$10 minimum.
4. Incorrectly generated ATP's were issued in amounts of \$1, \$3, and \$5. ATP's in these amounts are not negotiable. Vendors were advised not to attempt to transact these incorrect ATP's and to inform recipients they must return the ATP to the local office.

N.B. Phone instructions were issued regarding resolution of items #3 and #4 above. The system error has been corrected and no further action is required.

II. FSP-903 (ATP ISSUANCE ERROR/ACTION REPORT)

1. Category 1 and 3 cases appear on the FSP-903. Since these cases cannot be adjusted by local staff, as their maintenance is the responsibility of the SSI Demonstration Unit, they are to be disregarded.
2. The automatic case closure system for Category 9 food stamp cases with certification periods ending in 10/31/81 or 11/30/81 was run after the new pro-

gram standards were applied to the Recipient Master File. These cases have been closed and should not have appeared on the FSP-903. All cases with an end of certification date of 10/31/81 or 11/30/81 appearing on the FSP-903, that have not timely recertified, require no action.

3. Category 9 cases with an end of certification date of 12/31/81 or 1/31/82 have been closed in the usual manner if timely recertification was not made. No action is required for correction of these cases since the case will either be closed automatically or upon recertification have benefits calculated using new standards.
4. Some household size 3 cases with allotments of \$6, \$7, \$8, or \$9 appear on the FSP-903 Report. These allotments are probably correct. Due to a flaw in the computer program these cases were listed as incorrect and were not recalculated. These cases are to be recalculated using 12/1/81 standards and corrected if in error. If the allotment level is correct, no further action is required.
5. Incorrect SUA amounts were used in generating the FSP-903 Report for cases with certification periods listed below. These SUA amounts are, in fact correct and the cases should not have appeared as being in error.

	Correct SUA Amount
January thru April	\$281
January thru July	\$194
January thru August	\$178
January thru November	\$176

Recalculate using new 12/1/81 standards. These cases are overdue for recertification and should be recertified.

III. RESTORATION OF BENEFITS TO HOUSEHOLDS SENT COMPUTER GENERATED NOTICES WHO FILE A TIMELY APPEAL

Cases capable of being updated and adversely affected by the 12/1/81 program changes (FSP-902/Code A-130% or Code C-18%) were sent computer generated adverse action notices. The Temporary Restraining Order (TRO) issued in the *Foggs v. Block* Court suit found the original notices as transmitted by AP-81-45 to be insufficient. As a result, all households adversely affected were restored in December to their November benefit level.

Restoration of benefits for clients filing a timely appeal as a result of receipt of either of the computer generated notices (11/81 or 12/26/81) will be performed centrally. A temporary unit has been established to determine entitlement and provide benefits.

Recipients who returned the Appeal Card and whose cases would have automatically closed (Category 9 only) on either 10/31/81, 11/30/81 or 12/31/81 due to failure to timely recertify will *not* be restored to previous benefit levels. These households, whose certification period has ended are not entitled to benefit restoration and will be eliminated from this restoration process. Although these cases will not be restored to previous allotment levels, their appeal must still be heard. They will be scheduled for a fair hearing but will not receive an ATP from this Temporary Unit. These cases will be notified by the Temporary Unit that they will not be entitled to restoration of benefits.

Households that timely appeal the adverse action based on the 12/26/81 notice and were not scheduled for end of certification closure for the months of October, November or December, 1981 are entitled to and will be provided restoration of benefits. Terminated cases will be

issued an ATP for the full allotment level issued in November. Cases decreased will be issued an ATP for the difference between the November amount and the adjusted December amount. These amounts will be calculated from the allotment levels listed on the FSP-902 Report.

On 1/22/82, offices were sent photocopies of the Appeal Log established by the Temporary Unit. This log provides the names of cases which filed a timely appeal on either of the two notices (11/81 or 12/26/81) and are entitled to restoration of benefits beginning January 1982. If the timely appeal is not resolved (by decision, withdrawal, or abandonment) and the appellant's certification period has not ended, the Temporary Unit will again generate supplementary ATP's for the month of February, 1982. The amount of the benefits which will be issued will also be listed on the log. Instructions explaining entries will accompany the Log.

WC/jn

[HEAD OMITTED IN PRINTING]

AP-81-45

DATE: 11/19/81

TO: ASSISTANCE PAYMENTS STAFF

FROM: DUNCAN MACEachern, ASSISTANT COMMISSIONER,
FIELD OPERATIONS

RE: FOOD STAMP PROGRAM CHANGES — 12/1/81

INTRODUCTION

In August, 1981, legislation entitled the Omnibus Reconciliation Act required a number of changes in the Food Stamp Program which the Department will be implementing on 12/1/81. This memorandum provides a brief summary of each of the changes and describes the role of workers in implementing these changes.

POLICY CHANGES — GRADUAL IMPLEMENTATION

The following policy changes are effective on 12/1/81 for all new cases and must be applied to the current caseload at any time an issue arises regarding one of the policy elements, however, the policy must be applied no later than at time of the next recertification.

Household Definition — The Household Definition has been changed to require that living arrangements consisting of a child(ren) (no matter what age) and its natural/adoptive parent(s) must be considered as one household. The only exception to this rule is when at least one of the parents is 60 or over in which case the current rules for defining a household will apply.

Boarder Eligibility — The current policy defining who is considered a boarder and how to consider the income of a boarder has remained unchanged. However, once determined to be a boarder this individual is prohibited from receiving food stamps until his/her boarder status changes.

Strikers — Households containing a member who meets the food stamp definition of a striker are no longer eligible for food stamps unless the household was or would

have been eligible prior to the strike, i.e., counting the income of the striker(s) as it was prior to the strike. If the household was eligible they may receive food stamps, however, it will be at the level it would have been prior to the strike. Any additional income received, such as strike benefits, must also be considered in determining eligibility/benefit levels. This new policy regarding strikers does not apply to households in which the striking member is exempt from work registration for a reason other than full time employment.

If any of the above provisions are implemented within the certification period the notice requirements contained in the Food Stamp Manual - 364.840 and 364.860 are to be used. Otherwise the client must be notified by means of FSNL-1 or FSNL-2, which informs them of the result of the recertification.

The Department will be revising the FSP-1 (Food Stamp Application Form) and the FSP-5 (Change Report Form) to capture the additional information necessary to assist the worker in making appropriate eligibility determinations on the above policy changes. Until the revised forms are available workers must assure that during the interview the appropriate questions are asked to enable a correct eligibility decision, i.e. obtaining pertinent data on household composition, boarders and strikers.

The worksheet (FSP-4) has been revised to facilitate implementation of the gross/net income eligibility standard and the change in the earned income deduction which are discussed below. Eligibility and benefit determinations are to be calculated using the revised (12/81) worksheet for all actions effective 12/1/81 and after. An initial supply will be forwarded to local offices. Additional copies should be ordered in the usual manner from Printing and Supply at Kingston Street.

POLICY CHANGE — NEW APPLICATIONS EFFECTIVE 12/1/81

The following policy is to be applied to all Food Stamp applications with an application date of 12/1/81 or later.

Proration of First Month Benefits — Households applying on 12/1/81 or later who are determined to be eligible will only be entitled to benefits in the month of application for the period from the date of application through the end of the month.

FSPM XII explains the process to be used in calculating the amount of benefits the household is entitled to in the month of application and how these benefits are to be paid.

POLICY CHANGE — SYSTEM IMPLEMENTATION

The following changes are effective as of 12/1/81 and will be applied to all active cases as of that date. This effort will be system supported with local office responsibilities detailed below.

Gross Income Limit — As of 12/1/81, all households not containing an elderly/disabled member as defined in the Food Stamp Manual 364.400 (C) whose gross income exceeds 130% of the non-farm poverty income level (Maximum Gross Monthly Income Standards) will be ineligible for food stamps. Households containing an elderly/disabled member will still have their eligibility determined by comparing their net income with 100% of the non-farm poverty income level (Maximum Allowable Monthly Net Income Standards).

Earned Income Deduction — As of 12/1/81, the earned income disregard will be 18% of the gross earned income, after exclusions, rather than the 20% now allowed.

To accomplish these two changes (130% of gross and 18% earned income deduction) the computer will review each case to determine whether the case should be closed or reduced. This review will utilize the Recipient Master File as it appears at close of business on 11/20/81. The 130% gross standard will be applied to all cases except those cases identified as elderly/disabled by a medical expense code 1, 2, or 3 in B1. 39A of the TD. The 18% earned income deduction will be applied to all cases identified as having earned income in B1. 42 of TD.

Any closing/reduction will be reflected on the December ATP for those cases which the computer can identify and update.

A computer generated notice will be sent to each recipient whose case will be closed or reduced explaining the change in Federal regulations. The notice that is received will be specific to the reason for the change, i.e., 130% or Earned Income Deduction. Attachment #1 is the notice being sent to cases being closed as their income exceeds 130% of the gross limit. Attachment #2 is the notice being mailed to recipients whose cases are receiving an adjustment due to the new Earned Income Deduction. The address card enclosed with the notice has space for the client to request a hearing and instructs the client to return the card directly to the Division of Hearings. It is important that clients file an appeal by using the address card which was enclosed with their notice.

If a timely appeal is filed action will be taken centrally to restore the household to its previous benefit level. This system is being developed and detailed instructions will be issued shortly by a separate AP Memo.

A report (FSP-902 ATP Issuance Update Listing) will be printed and distributed for all cases that contain sufficient data for a computer review. A code will appear which identifies the specific action which was taken. (See ATTACHMENT #3 Reverse — Data Element #24) The listing contains the old and new food stamp allotment. Cases closed will show zeroes in the new food stamp allotment fields.

MANUAL UPDATE

A report (FSP-903 ATP Issuance Error/Action Listing) shall be sent to field offices during the week of 11/23/81 and will be issued by CAN. This listing identifies those cases which the computer was unable to adjust due to either missing information or information which did not allow a calculation. An error code will appear on the report which identifies the reason a household's benefits could not be reviewed and updated. An explanation of the error codes is given below.

EXPLANATION AND REQUIRED ACTION

ERROR CODE	EXPLANATION
2	Utility Code 4 appears in Block 47 and an amount greater than \$250 appears in Block 46. Check for accuracy of the utility code and amount.
3	Household exceeds maximum allowable net income standards or household size is greater than 18. Check for eligibility.
4	Medical Code 1 — Medical costs are zero or less than \$35.01 or Medical Code 3 — Medical costs are greater than \$35.00. These cases require manual calculation of the bonus value.
5	1) Recipient Master File data is incomplete. The bonus value cannot be calculated by the computer. Review and complete the latest TD using updated figures (code 5 only). 2) Case is under appeal. (A "7" appears in the appeal column.)
6	The computer calculated bonus amount does not equal the worker calculated bonus amount. Correct using updated figures.
7	Incomplete or incorrect information in block(s) 48 or 49, certification period. Correct using updated figures.
8	Invalid utility code/amount. Utility code does not agree with utility amount. Example: Case with utility code 2, Standard Utility Allowance, in block 47 with an amount other than the SUA in block 46.
9	Invalid Medical Deduction. Case is listed as a medical deduct code 1 or 3 but there is no one in the household age 60 or over or receiving Social Security Disability benefits.

Each case appearing on the FSP-903 must be reviewed to determine whether it is affected by either the 130% gross or

the 18% earned income deduction. If affected, a new calculation must be completed and the client notified. Clients affected by the gross income calculation must be sent two copies of the notice which appears as attachment #5 (#5A-Spanish). Clients affected by the change in earned income deduction must be sent two copies of the notice which appears as attachment #6 (#6A-Spanish). Since the number of cases on the FSP-903 should be limited, a supply of the notices appearing as attachments 5, 5A, 6 and 6A will *not* be produced by Kingston Street. Copies of these notices are to be made in the local office.

A Turnaround Document must then be completed to change the Recipient Master File for those cases adversely affected by either the 130% or 18% standard. When submitting the TD, a copy of the notice sent to the client must be attached. Normal appeal standards will apply to cases handled in this manner.

If no adverse action is appropriate, the worker must take the action required to correct the file data which prevented the automatic calculation.

If an adverse action is required for reasons other than the 130% or 18% standard, or for reasons in addition to the 130% or 18% standard the FSNL-5 process must be utilized.

All of the activity related to the cases appearing on the FSP-903 must be completed by 12/4/81. All changes in Household Eligibility or Benefit Level are to be in effect for January ATP's. A sample of the FSP-903 appears as attachment #4.

NEW AND REVISED MATERIAL
FSP-4-Worksheet

AP-81-45

ATTACHMENT #3 (Reverse)

DESCRIPTION OF FSP-902 DATA ITEMS

Data Element Number	Data Element Title	Description of Data Element
1	FSP-902	Name of Report
2	REGION	Region Number
3	WSO	WSO/CSAO Number
4	SOC WORKER	Case Assignment Number of the worker whose cases appear on the list
5	DATE	This is the date the action took place
6	CAT	Category of the case being described
7	SSN	Case Social Security Number
8	NAME	Case Name
9	STREET	Street address of the case
10	RACE	Race code for case (block 22 of the T.D.)
11	HH	Number of people in the household (block 40 of the T.D.)
12	COUP OLD	Benefit level prior to calculation
13	COUP NEW	Benefit level resulting from new calculation
14	INCOME EARNED	Earned Income (block 42 of the T.D.)
15	INCOME UNEARN	Unearned Income (block 43 of the T.D.)
16	INCOME OASDI	OASDI Income (block 28 of the T.D.)
17	CHILD CARE	Amount of child care expenditure (block 44 of the T.D.)
18	SHELTER	Amount of Shelter Costs (block 45 of the T.D.)
19	UTILITY	Utility Costs (block 46 of the T.D.)
20	UT CODE	Utility code (block 47 of the T.D.)
21	CERT DATES BEGIN	First month of the certification period (block 48 of the T.D.)
22	CERT DATES END	Last month of the certification period (block 49 of the T.D.)
23	MED CD	Medical code (block 39A of the T.D.)
24	ERR CD	A. Designates case ineligible and therefore closed due to the 130% calculation. B. Designates the computer had all the information to do a calculation and there is no change in benefit level. C. Designates that the case was closed or decreased due to the 18% earned income deduction.
25	APL	Appeal Code (not applicable)

[LETTERHEAD OMITTED IN PRINTING]

AP/ADM-81-78

DATE: 11/19/81

TO: FIELD MANAGERS, CSAO/WSO DIRECTORS, ASSISTANT
DIRECTORS FOR ASSISTANCE PAYMENTS, RDCU
MANAGERS, FINANCIAL ASSISTANCE SUPERVISORS I AND
II, FOOD STAMP SUPERVISORS

FROM: DUNCAN MACEachern, ASSISTANT COMMISSIONER FOR
FIELD OPERATIONS

RE: 12/1/81 FOOD STAMP CHANGES

State Letter 559 and AP-81-45 transmitted the changes to the Food Stamp Program which become effective 12/1/81. This memo explains the administrative responsibilities related to the changes being handled by the computer.

In summary the computer will be reviewing each active Food Stamp case (PA and NPA) and making an automatic adjustment for the December ATP. Two copies of the FSP-902 report will be sent to each office. This report which is in REGION/WSO/CAN order identifies the cases which were adjusted because of the Gross Income limit and Earned Income deduction. One copy is to be retained as an office copy, the other is to be distributed to each worker for reference.

In addition an FSP-303 report will be produced which identifies those cases which the computer was not able to adjust due to either missing information or information which did not allow a calculation. Three copies of this report will be distributed. One report should be retained as an office control copy, one copy should be maintained by the Supervisor with the third copy being provided to the worker who is responsible for performing a case review and taking any necessary action resulting from the review.

At the conclusion of the effort a summary sheet (Attachment B) must be submitted to: Massachusetts Department of Public Welfare, Central Services, Office of Field Operations, 600 Washington Street, Boston, Mass. 02111, ATTN: 903 Reports.

CSAO Directors are responsible for collecting the reports for their respective WSO's. The WSO reports are *not* to be consolidated with the CSAO figures. CSAO and WSO figures are to be kept separate to facilitate accumulation of statistics at the end of the project.

Attachment A contains the timetable for completing the process.

Attachment B is the Reporting Form to be used.

[LETTERHEAD OMITTED IN PRINTING]

AP/ADM-81-79

DATE: DECEMBER 1, 1981

TO: FIELD MANAGERS, CSAO/WSO DIRECTORS, RCDU
MANAGERS, ASSISTANT DIRECTORS FOR ASSISTANCE
PAYMENTS, FINANCIAL ASSISTANCE SUPERVISORS I AND
II

FROM: DUNCAN MACEachern, ASSISTANT COMMISSIONER FOR
FIELD OPERATIONS

RE: 12/1/81 FOOD STAMP PROGRAM CHANGES — UPDATE

This memorandum provides an update on the computer effort related to the 12/1/81 Food Stamp changes as communicated by SL 559, AP-81-45 and AP/ADM-81-78.

In summary there was a slight delay in the programming of the 12/1/81 changes which has resulted in a delay in the receipt of the FSP-902 and FSP-903 reports. These reports will be received on either 11/30 or 12/1. As a result of this delay the timetable which appeared as Attachment A to AP/ADM-81-78 has been revised. Attached is the new timetable.

In addition to the delay there were a few other modifications to these reports which are outlined below:

— Each worker will receive three (3) separate 902 reports. There will be a separate report for each of the three error codes.

Error Code A — Cases which were terminated as a result of the 130% calculation.

Error Code B — Cases which were unchanged as a result of the new program changes.

Error Code C — Cases closed/reduced as a result of the change in the Earned Income Deduction.

— AP-81-45 explained what would appear on the FSP-902 under the heading "Old Coup" and "New Coup". Due to

a programming change these instructions do not apply to those cases which are closed. The values that appear under these headings are not to be considered for closed cases.

- There is a separate 903 Report for each Error Code. Therefore workers could receive multiple 903 Reports.
- An "R" will appear on the printout under the column headed "APL". Any case with such a code has been calculated using the new rounding computation which became effective on 9/1/81.

Please see that appropriate staff are notified of the changes.

DEPOSITION OF JOHN F. CASSEDY

* * *

[4]

Direct Examination

* * *

Q. Can you state your name and address and occupation?
A. John Francis Cassedy, C-A-S-S-E-D-Y. 183 High Street,
Hingham. I am director of systems for the Department of
Public Welfare.

Q. How long have you been working with the Department
of Public Welfare? [5] A. Sixteen years.

Q. And how long have you been the director of systems
there? A. Since October, 1980.

* * *

[6] Q. What is your educational background? A. I have a
Master's Degree in Social Science from Simmons College in
Boston.

Q. And do you have any educational training in computer
science? A. Could you explain what you mean by that?

Q. Well, did you take courses in college in computer
science? A. I took courses at graduate school, and I took in-
service training in courses offered by a variety of producers of
computer systems.

Q. Okay. What's the organizational structure of the
Department of Public Welfare? A. There is a commissioner.

Q. And who is below the commissioner? A. There is a
deputy commissioner.

Q. There is just one deputy commissioner? A. Yes.

Q. Who is below the deputy commissioner? A. An
associate commissioner.

[7] Q. Who's below the associate commissioner? A. There
are a number of assistant commissioners and directors.

Q. And how many assistant commissioners and directors
are there? Do you know? Can you run down the different
branches, or bureaus? A. There's a director of medicaid.
There's a director of policy and procedure — I'm sorry.

There's a director of policy, a director of procedure, a director of hearings. There's general counsel, director of child support enforcement, assistant commissioners for administration. And there's an assistant commissioner for field operations.

Q. Okay. And where do you fit into that picture? A. I report directly to the associate commissioner.

Q. Which associate commissioner? A. James M. Hall.

Q. And what organizational level is your bureau in? A. I have one assistant director.

Q. And who's that? A. Rita Leweck.

Q. And below the assistant director? A. There are four project managers.

Q. And what projects do they manage? [8] A. One is responsible for the development of model child support system. One is responsible for the implementation of the FAMIS project. One is responsible for the day-to-day activity in the Department. And one is responsible for the coordination of our on line data entry.

Q. And who is the person responsible for coordination of the on line data entry? A. Robert Falk.

Q. What is the FAMIS program? A. Family Assistance Management Information System. It's a federally-mandated — it's a guideline produced by the Health and Human Services to assist the states in developing automated management systems meeting minimum Federal criteria similar to MMIS.

Q. What is that? A. Medicaid Management Information Systems.

Q. That would be the responsibility of the assistant commissioner of medicaid or director of medicaid? A. Yes.

Q. And below the project managers, who would there be in your bureau? A. There's only two additional staff people who work at [9] 600 Washington Street — I'm sorry. There's one I'd like to go back and correct. The monthly income reporting is responsible to me.

Q. Who is in charge of that? A. Jim Gleich.

Q. And below the project managers? A. There's two staff.

Q. Do they work with any particular one of these five subdivisions? A. For the most part they work with Rita Leweck in terms of day-to-day systems, analysis systems planning.

Q. Does your bureau have responsibility for the issuance of A.F.D.C. checks and food stamp ATP's? A. We have the responsibility for maintaining the system that does issue benefits.

. . .

Q. Does your bureau have any responsibility for [10] overseeing the computer system that generates the monthly food stamp ATP's and the A.F.D.C. checks? A. Can you define "oversee"?

Q. To insure that the data is being collected and fed into the computer correctly, that the computer programs themselves are correct so as to generate checks and ATP's in the proper amount? A. Yes.

Q. Does the Department of Public Welfare's computer system presently have the capability for generating any notices of reduction or termination of public assistance benefits? And when I refer to the Department's computer system, well, why don't I strike that and lay a better foundation. A. We do not have a Department of Public Welfare computer system.

Q. Are the Department of Public Welfare benefit checks issued by computer? A. Yes, they are.

Q. And who owns that computer? A. The computer resides under the supervision of the secretary of administration and finance.

Q. Do you know if it is owned by the State or leased? A. I believe it is leased.

[11] Q. Do you know what type of machine that is? Make and model number? A. I know the product name is IBM.

Q. But you don't know the model number? A. Well, I know the main frame model number is a 3033.

Q. Okay. Then there are certain notices of reduction or termination of public assistance benefits generated by computer? A. No.

Q. In the MIRS system are there computer generated notices of reduction or termination of benefits? A. Yes.

Q. How long have you been working with the computer system that generates the A.F.D.C. checks and food stamp ATP's? A. Off and on five years.

Q. And how long have you been working with the MIRS computer system? A. Approximately 18 months.

Q. And how old is the MIRS computer system? A. I don't understand what you want to assign age to.

Q. How long has the Department of Public Welfare been involved in the monthly income reporting system, computer operated monthly reporting system? [12] A. The Department signed a contract approximately 24 months ago to develop a monthly income reporting system.

Q. And when did that go on line? A. July 1st, 1981.

Q. And you became involved in that project, the MIRS project, approximately 18 months ago? A. Yes.

Q. Did you have any involvement in designing the MIRS system or in designing the computer system which generates the checks or ATP's? A. What do you mean by "design"?

Q. Well, developing the computer programs? A. No.

Q. Did you have any involvement in determining what types of reports and what types of notices, end product notices you wanted to generate by that — by the MIRS system? A. A very cursory review.

Q. Is there a contract which the Department entered into with the Electronic Data Processing Corporation? A. Yes, there are two contracts.

Q. With regard to the contracts — with regard to the computer which generates the A.F.D.C. checks and [13] food stamp ATP's, does it perform any other function for the Department in addition to generating those checks and ATP's? A. Such as?

Q. Such as does it generate the general relief checks? A. Yes, it does.

Q. Does it report, print out and report data to the Department concerning any characteristics of those? A. Yes, it does all of the report writing, yes.

Q. What kind of reports does it issue? A. It provides a series of management reports.

* * *

Q. With regard to the Food Stamp Program, does it generate management reports? A. Yes, it does.

Q. And can you describe — can you name — are there different management reports that it generates? A. Yes, there are.

Q. Can you tell me what those different management reports are? [14] A. I can recall some of them, yes.

Q. Okay. To the best of your recollection. A. There is a 902 report.

Q. What does that do? A. It indicates the participation of individuals in the Food Stamp Program. And the amount of benefits that they receive on a monthly basis.

Q. Okay. Are there other reports? A. There's a 903 report which provides those situations where there are errors in the processing of data that requires field follow-up and correction.

Q. Are there others? What kind of errors does it report? A. There's a requirement that certain income fields come in with pennies and other fields come in with the pennies dropped off. If in fact it is processing data inconsistent it will error that process off for the worker to determine what is the correct amount of money that should be in that field.

Q. Okay. What other reports does it generate? A. It generates a duplicate issuance report.

Q. And what is that? A. It indicates that the same person has received benefits in more than one category of assistance.

[15] Q. Are there any others? A. A reconciliation report which compares the machine issuance authorizations to purchase with the over-the-counter authorization to purchase.

Q. Are there any other reports? A. There's a timely case closing report.

Q. And what does that do? A. FNSL 12.

Q. What is that? A. That determines those households in which the certification period is going to end in the next month, and it automatically notifies those households that they are obliged to communicate with the Department regarding their continued recertification for food stamps.

Q. How does it notify the household? A. It goes into the master files, it selects those cases — for illustration in the first of February it will select those households due for a closing at the end of March. It will generate a list. It will send out an IBM stock card to those households indicating that their participation in food stamps will end in the next subsequent month and they are obligated to notify the Department and to enter into [16] a recertification process.

Q. The IBM stock card is a preprinted notice? A. Correct.

Q. A general notice? A. Correct.

Q. And the computer generates an address list, essentially? A. A name and address card that goes with the notice.

Q. Does it also generate an envelope? A. We use a window envelope in which to insert the name and address card.

Q. Are there any other reports? A. There are master files by social worker or financial assistance and food stamp worker. There's reports of cases, summation of cases by regions, the WSO's, CSA's. It reports the sum of the amount of money and the number of participants in the state.

Q. Is there anything else that you can think of? A. Not that I can think of.

Q. Is your — you're responsible for modifying the programs which generate the checks and the ATP's if there is a change in law necessitating a change in computation formula? A. We are responsible to working with policy and/or [17] procedure to do a systems request to modify, if in fact it is a data

processing system necessary to meet the changes in regulations or changes in circumstances.

Q. Okay. Who actually does the modifications? A. The Bureau of Systems Operations.

Q. And that's in the Department, Massachusetts Department of Administration and Finance? A. Finance, yes.

Q. How often have those programs had to be modified in the last six months?

Ms. JANOS: Can you be specific as to which programs you're talking about?

Q. Okay. The program which generates the food stamp ATP's, to be specific. A. Four times in the last six months.

Q. And what changes had to be made in those programs? A. One was—the first one was to account for the ratable reduction.

Q. When was that done? A. That was done in August. The second one was what we call rounding.

Q. And what is rounding? Q. Rounding is the phenomenon that I described previously [18] where certain fields, earned income, child care, which demand there be cents in the cents field, and other situations required that it come in rounded. The Federal government requires that these monies be in a predictable fashion so we had to change our system to meet their regulations.

Q. So that would just be either the rounding would be reducing a number that included cents to one that just included dollars, something like that? A. Correct.

Q. Okay. What was the third change? A. We had to change the programs to do 130 percent calculation. For those households who were working we had to modify the program to be able to determine the number of households in which the income they had reported to us exceeded the allowable tables provided by the Federal government, Department of Agriculture to us. We call it the 130 percent test.

* * *

Q. How much effort in terms of man-hours of work or woman-hours of work was required to—

[19] THE WITNESS: Which change are you speaking to?

Q. The 130 percent change. A. I could only give you a very general estimate. BSO could give you a much more definitive statement in terms of man-hours, man-weeks, to make the necessary changes. I would just say that it was with a great deal of difficulty.

Q. Did you initiate requests to BSO? A. The associate commissioner James Hall requested me to proceed with systems modifications to account for the food stamp changes.

Q. That would be the 130 percent? A. Yes.

Q. Were there other changes as well? A. There was also a request to institute the 18 percent multiplication factor on households that had reported to us that they were working.

Q. Is that what is also referred to as the 18 percent earned income disregard? A. Yes.

Q. Were those in both the 130 percent and the 18 percent changes required modification of the computer programs that generate ATP's? [20] A. Yes.

Q. And was a request made to BSO by the Department of Public Welfare to modify the computer programs to accomplish those changes? A. Yes.

Q. And when was that request made to BSO?

Ms. JANOS: Which one are you talking about?

Q. Well, was there one request or two requests? A. There was one request.

Q. For the change to 130 percent and to 18 percent? A. Yes.

Q. And when was that request made? A. We advised BSO, I believe, in August of the then presumed change in Federal regulations anticipating the actual signing into law of these changes. The formula request did not take place until the first or second week in October.

Q. Did anyone at BSO ever discuss with you the length of time or the number of man-hours or man-weeks that would be required to accomplish this change? A. Yes.

Q. And what did they tell you? Q. They told me that it was a difficult task, and that [21] the person most responsible for the maintenance and changes was seriously ill with cancer.

Q. And what was the name of that person? Q. Joseph Cardello.

Q. Did they give you an idea as to how long it would take to effectuate the modification of the programs? A. We indicated that there was a date in which it must be done.

Q. And what date was that? A. December 1st, 1981.

Q. And why did it have to be done by that date? A. That was the date to which I believe the Department of Agriculture waived the ten/one implementation for the State of Massachusetts.

Q. By ten/one, you mean October 1st? A. October 1st, yes.

Q. And what date did you tell them—you had told them it had to be done ten/one. When you told them that, what was their response? A. That it would be very close, and in light of this individual's illness, that it was at best a 50/50 proposition.

Q. Was the change accomplished by December 1st? A. Yes, it was.

[22] Q. And when were you notified that a change had been effectuated? A. By whom?

Q. When did BSO inform you or the Department of Public Welfare that they had in fact modified the computer programs to accomplish this change? A. Wednesday before Thanksgiving at 4:00 o'clock when in my judgment we were ready to proceed with the implementation of the system.

Q. Is that when they notified you? A. I was present when we were reviewing the test output at that point.

Q. And what decision was made on that Wednesday at 4:00

o'clock? A. That the programs work successfully, and that as a responsible agent on behalf of the Department of Public Welfare I authorized their cataloguing.

Q. What is cataloguing? A. Taking them from a test environment and putting them into production.

Q. How long does that take? A. Cataloguing programs all depends. An hour, an hour and a half.

. . .

[23] Q. Was a general notice sent out to all food stamp households affected by the 130 percent change and the 18 percent change? A. What do you mean by "general"?

Q. A notice which was the same with regard to each household. It didn't have any individual information on it with regard to that household's specifics. A. There were different messages sent out.

Q. Okay. Was one—did one relate to the hundred thirty percent persons affected? A. Yes.

Q. And one to households affected by the 18 percent change? [24] A. Yes.

Q. And when did the Department make the decision to send out the notices to those households affected by the 18 percent change? A. I do not know specifically.

Q. Do you know when those notices were sent out? A. Do I know when they were mailed out?

Q. Yes. A. They were mailed out on the—there were two different classes of notices. A hundred thirty percent were mailed out on November 25th. And the 18 percent were mailed out on November 30th.

Q. How did the Department determine which households would be affected by the 18 percent change? A. I don't understand.

Q. Well, you mailed a notice out to all the households affected by the 18 percent change. How did you know which households were affected by that change? Did the computer generate a list or mailing slips, or did the Department person-

nel determine this by hand? A. The computer determined those households in which the change from 20 to 18 percent would apply.

Q. And did it then print up a mailing slip or an address slip? [25] A. It printed up a name and address card to be inserted with the accompanying message.

Q. I'd just like to show you this and ask you if that is an example of one of the computer generated name and address cards? A. Yes, it is.

. . .

Q. And did this name and address card serve any other function?

. . .

THE WITNESS: I believe this message on [26] the bottom was to be able to be completed if the household wished to appeal. I believe there was a second purpose for that.

Q. Do you know what computer language the BSO computer uses or operates on? A. I can respond that the proper person is BSO, at BSO. My assumption is it is in Cobalt.

Q. Do you know the memory size of the machine that they use? A. No, I don't.

Q. Do you know what media the data is stored on? A. Once again, I can indicate to you to my best knowledge the proper party would be BSO who's responsible for the maintaining of the data. My understanding is it is on tape and disc.

Q. Do you know what kind of peripherals the BSO has? A. I know they have disc drives and tape drives and printers. But I don't know explicit details in terms of the types and capacities.

Q. Are there terminals also? A. What do you mean? I don't understand.

Q. Are there terminals for the input of data into the BSO computer? A. Yes, there is.

[27] Q. What time sharing arrangements does the Department of Public Welfare have with the Bureau of

Systems Operation for the use of the computer? A. Once again, I think the best party to speak to that would be BSO, but my understanding in working with them is we have the number one priority with BSO.

Q. Are there any contracts or written agreements or arrangements concerning the Department of Public Welfare's access to and use of computer time? A. I believe there is a very general interagency agreement that was developed in April or May speaking to service obligations that BSO would have to the Department of Public Welfare.

Q. Do you have a copy of that agreement in your files? A. I could find a copy, yes.

. . .

Q. Does the Department have access to the computer to make an emergency or short notice runs, or ad hoc information requests? A. We—the Department has the right to request. Once again, programming and the actual retrieval of information is the obligation and responsibility of [28] BSO. We do have instances where we do request information in what you might call an ad hoc or as needed basis.

Q. Has BSO ever turned down the Department on one of these requests, to your knowledge? A. No.

Q. How many programs are there, do you know, for using the BSO computer to generate food stamp ATP's? A. I really don't know. There's a series of programs, that's all I know.

Q. Who developed the programs? A. Back in 1974 they were developed by the project management office which subsequently became BSO.

Q. In what department was the project management office? A. The Department of Public Welfare.

Q. Were you in that project management office involved in that at the time? A. No, I was not.

Q. And how long has the Department been using these programs? A. Since 1974.

Q. Do you know how often food stamp computer programs

have been modified over that period of time? Q. Only in general terms.

[29] Q. In general terms, how often? A. I would say probably—I would say there's been over 25, as many as 35 changes to the basic system.

Q. And who did the modifications? A. PMO, BSO.

Q. Depending on which agency was operating the system at the time? A. Correct.

Q. And what types of modifications were done? A. Well, I can give you two examples. When food stamps initially was part of—became part of the Department of Massachusetts we were on commodity distribution. And ATP was two-sided. A person could redeem the first part in the first part of the month, and the other half in the other half of the month. Then they required we send out one ATP for the entire month.

The second was we used to have an authorization to purchase for a hundred dollars of which the recipient was obligated to pay thirty dollars of that toward the one hundred dollars in food stamps. I don't remember the exact day, but the Department of Agriculture changed that requirement. There was no cash requirement. The ATP redeemed that on presentation.

[30] Q. And any time the law changed so as to change the formula for computer food stamp benefits, the program would have to be modified? A. Yes.

Q. What kind of computer readable data is available from the BSO computer regarding each food stamp household? A. I really don't know what you mean.

Q. Okay. Computer readable data would be data in the form of card files or tape files, disc files or marked sense forms, or there are other ways in which— A. Could you repeat the question?

Q. What computer readable data is available regarding each food stamp household from the BSO computer? A. I think that BSO would probably most assure a correct answer, but I do know we store our media on disc and tape.

Q. And would those discs and/or tapes contain the income data on food stamp households? A. Yes.

Q. Would it contain data on the housing costs of a food stamp household? A. Yes.

[31] Q. Would it contain data on all the elements that go into the computation of a food stamp ATP? A. Now, what do you mean by "computation"?

. . .

Q. Well, what data does the computer have in it, or on tape, which enables it to determine food stamp benefits amounts? A. It carries the adjusted income for each household, earned income. It carries the summed unearned income. It contains the household composition, includes medical deductions, child care costs, shelter and utilities. . . .

. . .

[32] . . . I think that covers the variables.

Q. And would all of these variables be contained on a stored tape, be stored on tape, or disc? A. Yes.

Q. How is that information collected? A. It's collected via an assortment of applications, reapplications. Data gathering forms essentially by technicians, case workers, and to some extent clerks. Any agent on behalf of the Department can collect data.

Q. That information is collected at the local office level? A. Yes, it is.

. . .

Q. After it's collected at the local Welfare Office, what is done with it? A. The data is transcribed onto a turnaround document. That's the only acceptable input document into our data processing system. And it's prepared by a technician or case worker. It's then submitted to an edit and preparation clerk who edits the document for legibility, any kind of obvious errors, batches [33] the data and prepares it for pick-up by the courier.

The courier generally goes by every office in the state on a

daily basis and picks up such bundles of data that is already batched.

Q. And what does the courier do with batched data?

A. The courier then takes it into our regional data control units. I would call them R.D.C.U., if we continue. The acronym is R.D.C.U. The R.D.C.U. receives the data. They once again edit it for legibility, do a higher level of editing in terms of interfield relationships, alpha/numeric, and get it ready for key entry at the R.D.U. which is the key entry unit. It's physically contained in the R.D.C.U.

Q. And then what happens next? A. The batches are key entered. They are passed on line to a disc that resides at 801 Ashburton Place. Whatever is received that day is processed that day, generally. The system does an update that evening, accepts data or rejects the data.

Q. What would cause the computer to reject the data?

A. If in fact the worker's conclusion, the worker when arithmetically computing the amount of food stamps that a participant is entitled to, the master computer [34] calculation system does not agree, it will reject the incoming data and put out an error message to the worker.

Q. When the worker collects the data and fills out the turnaround document, included on the turnaround document is the correction that the worker enters, the earned income, summed unearned income, household composition, medical expense, shelter, utilities, child care as well as a determination or computation as to the benefit amounts as well? A. Yes, correct.

Q. Does the computer generate a report which is sent back to the local office for a verification of accuracy? A. Yes, it does.

Q. And in what form is that report? A. The report is called the 1070. It is printed back at the R.D.C.U.'s reflecting the previous day's input into the system. It's reporting by exception. It only contains those situations in which there was a

check or benefits issued, and/or there was an error. If in fact a worker requested an address change, if that successfully passed the edits, only if there is a check or benefits produced and/or if [35] there's an error is it returned on a 1070 report.

Q. If a turnaround document were entered to change a benefit in a subsequent month, but not require issuance of an ATP immediately, would there be a report which came back to the R.D.C.U. on that, assuming that the computer found no error? A. I'm sorry. I don't understand the "subsequent month".

Q. Okay. Let me take a hypothetical. On January 5th a recipient reports to a social worker a change in an income. And the social worker takes down that change in income, fills out the turnaround document for submission to the computer to change that recipient's food stamp benefits for the month of February to reflect the change in their earned income. Assuming that the computations by the case worker match the computations that the computer does with the new data would a report on—a report 1070 be printed out? A. No. For every transaction that's posted to the master file, the worker gets a new turnaround document.

Q. And that turnaround document is issued by the computer? [36] A. Yes.

Q. And what does it have? What does it include? A. It's a representation of the master file, recipient master file and a portion of the history file as of that update.

Q. Is it printed out in the same format that is the turnaround document that the worker has sent in? A. Yes.

Q. Is the worker required to do anything with that turnaround document when it comes back to the worker? A. They are procedurally required to review the returning turnaround document to compare it with a copy of the originating turnaround document to be sure that the changes that were noted upon it, or requested by a social worker on behalf of an applicant recipient were in fact accomplished on the data files.

Q. Is the case worker required to send in any documentation that this check has been completed? A. No, there is not.

Q. Only if they discover an error? A. Correct, yes.

* * *

[37] Q. Does the computer that generates the ATP's have data information on the entire food stamp population in Massachusetts? A. What are you referring to?

Q. The BSO computer that generates the ATP's for the entire food stamp population in Massachusetts. A. Yes. On tape or disc it has data on the entire food stamp population in Massachusetts, the data that we outlined just before, yes.

Q. Okay. How long do you keep that data? A. Once again, I'd have to defer to BSO. There is a predetermined retention schedule that meets all Federal and State requirements, but the exact retention, BSO would be able to speak to that.

Q. Do you know if it's more than a year? A. I believe so, yes.

Q. Can you obtain from the computer information on the amount of food stamp benefits a household received in [38] a prior month? A. Yes.

Q. Could you find out the amount of food stamp benefits a household received six months prior? A. Yes, I could.

Q. And that can be done with the existing program? A. Yes.

Q. Is the computer presently capable of reporting the amount of a reduction in benefits attributable to any given change which occurred in a food stamp household's benefit level? A. Would you repeat that, please?

Q. Is the computer presently capable of reporting the amount of a reduction in food stamp benefits attributable to a given notice, a given notice or a given change that occurred, for example, in December if a household's food stamp benefits were reduced ten dollars because of a change in income, would it be possible to retrieve that information from the com-

puter? A. Are you—are you trying to determine if it is possible or if today anything is possible?

Q. No, if today you can do it.

* * *

[39] THE WITNESS: Are you speaking to mass changes or any change that occurs during the month for any recipient?

Q. At this point I'd be talking about any change. A. No.

Q. Okay. Are you able to—are you presently capable of obtaining from the computer system, the present computer system, the amount of reduction which a given household received due to the change from 20 percent to 18 percent in the earned income disregard? A. Yes.

Q. And were you able to obtain that information in December of 1981? A. In what medium are you suggesting?

Q. Well, in a general report. A. Yes.

Q. In late December or December of 1981, or early January, 1982, a series of supplemental food stamp ATP's were issued to all households which were— [40] which received a reduction due to the change from 20 percent to 18 percent in the earned income disregard. Were those ATP's computer generated? A. Yes, they were.

Q. Did computer programs have to be modified to accomplish the issuance of that supplemental ATP? A. My understanding is that we reran the tapes that resulted in the first change. I believe there was some slight modification. Once again, I think BSO would have to speak to the degree of complexity in rerunning the supplemental ATP's to those affected individuals.

Q. Okay. So your answer is that you're not certain exactly what was done to accomplish that? A. Yes.

Q. About when did the Department of Public Welfare notify the Bureau of Systems Operations that those supplemental ATP's needed to be generated? A. I really don't know the exact day. It was immediately after Judge Freedman's decision in Springfield. It was very shortly thereafter.

Q. Did the Bureau of Systems Operations inform you of how much time would be required to accomplish that task?

A. Yes, they did.

[41] Q. And how much time did they say would be required to accomplish that task? A. They did not specify in terms of man-days or man-weeks. They indicated that because of the coming Christmas holidays and as a result of other tasks that it would be a difficult situation to in fact send out supplementary ATP's within the time specified by the Court.

Q. Do you know when the ATP's were printed by the computer? A. The ATP's, I believe, were printed around the 29th of December using January ATP stock.

Q. Do you know how many people in the Bureau of Systems Operations worked on the generation of the supplemental ATP's? A. The total number of people?

Q. Yes. A. I could only guess that maybe as many as ten people were involved in one way or another. BSO would know.

Q. And what exactly did the supplemental ATP reflect?

A. It reflected the difference between what they would have received if in fact the 18 percent calculation had not taken place. It represented the difference between November and the December ATP.

. . .

[42] Q. Okay. Before the ATP's for December 1981, before the original ATP's for December 1981 were issued, could the computer have determined and reported the actual amount of the reductions that were going to go into effect that month, the dollar amount? A. Who would you want that reported to?

Q. Could the computer generate a general report, a print-out or whatever of that information? A. The difference between the preceding month and the new month?

Q. Yes. A. Yes.

Q. Did it do that? A. Did it—did we—okay, ask the question again.

Q. Did the computer print out a master list by household of the reductions that went into effect in December? A. You mean the specific difference?

[43] Q. Well, either the earlier amount, the former amount and the reduced amount or the actual difference, whichever? A. Yes.

Q. And was it a former and present amount, or was it the dollar amount of the difference that it reported? A. It reported the level of participation for November and the level of participation as a result of the change in December.

Q. And when was that report issued by the computer? A. I have a copy of the report dated 11/25/1981.

Q. Okay. Could the computer print out an amount on a notice individually addressed to each food stamp household? Could it have done it as programmed back in December?

Ms. JANOS: Could you state specifically what is it that you—

Q. Print the amount of the reduction attributable to the 18 percent change on a notice individually addressed to each food stamp household? A. Would you read the question again?

Q. Could the computer in November or early December, 1981, as it was then programmed, generate a notice individually addressed to each food stamp household [44] informing that household of the actual amount of the reduction due to the 18 percent change, or informing them of the prior benefit level and the new benefit level due to that change? A. At that point in time the program was not able to do that.

Q. Is it capable of doing that now? A. I would think that that would be best answered by BSO.

Q. Well, do you know whether it could do that now? A. It would have to be an assumption on my part. I do believe with some effort it could possibly be done.

Q. Now, when you refer to some effort, would that refer to some modifications in the program? A. Yes.

Q. Do you know how long it would take to accomplish those modifications? A. No, I don't.

Q. The supplemental ATP's that were issued, are they individually addressed to specific persons or households? A. Yes.

Q. Does that appear right on the ATP, the name and [45] address of the household? A. Yes, it does.

Q. Does that ATP also have printed on it that household's specific food stamp benefit allotment? A. Yes, it does.

Q. On the supplemental ATP's, printed on them was the dollar amount of the reduction due to implementation of the 18 percent change; is that correct? A. Say that again?

Q. The supplemental ATP's, the dollar amount that was printed on the supplemental ATP's was the amount by which those families' food stamp benefits were reduced in December due to the 18 percent change; is that correct? A. Are you suggesting that the card was given different—

Q. No, I just want to know the amount of it. A. It reflected the amount of the difference between November and December.

Q. And that difference was due to the change from 20 percent to 18 percent in the earned income disregard? A. Correct.

Q. Okay. If you can produce by computer and send to the right address individual supplemental ATP's [46] representing the amount of the food stamp reduction due to the change from 20 percent to 18 percent in the earned income disregard, what would have to be done to produce by computer and send to the right address individual food stamp notices informing the households of the amount of the reduction due to the change in the earned income disregard, if you know? What would have to be done? A. I couldn't speak to all of the modifications that would be necessary. I think BSO would have to speak to the modifications in the processing and particularly the printing of the data.

Q. Okay. Can information stored in BSO computer be transferred to the MIRS computer, if you know? A. I don't know. I really couldn't answer. It's too vague.

Q. Okay. Does the BSO computer have the capacity to generate a mag tape which the MIRS computer could accept and process and input a mag tape containing data on food stamp households? A. I think that would be properly answered by BSO.

Q. Is your answer that you don't know? A. Yes.

Q. Okay. If you don't know, please say "I don't know."
[47] Don't say "It would be properly answered by BSO."
A. Okay.

Q. Is information from the data from the MIRS computer transferred by magnetic tape to the BSO computer at present?
A. Yes.

Q. Does the data that's transferred include data on food stamp households that are included in the MIRS reporting system? A. It includes food stamp data as it relates only to the A.F.D.C. cases that are on the MIRS system.

Q. Does the BSO computer also get data regarding food stamp changes for those A.F.D.C. households with earned income from the local case workers through the turnaround document process that you described before? A. Could you clarify that again?

Q. Okay. Before we went through the process by which information is fed into the BSO computer by use of a turnaround document. A. Yes.

Q. That is also fed into the MIRS computer. And we went through in some detail this morning how that was done. [48]
A. Yes.

Q. And data is also transferred from the MIRS computer to the BSO computer by a magnetic tape. Now, any food stamp household with earned income that also receives A.F.D.C. would also be in the MIRS computer. And for such a household are changes, also a change in food stamp benefit

amount because of, say, a change in rent, would that be generated through a turnaround document from the social worker, or would that be generated only by first going through the MIRS computer? A. Once a case is what we call initialized on the MIRS system, all subsequent changes to any data must pass through the MIRS system.

Q. Is there some procedure to check whether or not any given household is on both systems? A. They have to be on both systems. They must be carried on both master files. BSO produces the benefits as a result of transaction input from EDS. So because of the fact that BSO is the repository of the benefit issuance, they have to appear on both files.

Q. Does the data that's transferred from MIRS into the BSO computer, is that in the same format as the [49] turnaround document? In other words, it would be earned income summed and the earned income adjusted? A. It is processed data that MIRS passes to the BSO computer system.

. . .

Q. When a new recipient is added to the MIRS system because of a change in their statutes so that they're subject to the monthly income reporting system, how is the base data on that individual determined? Is that taken from the BSO computer, or is it generated by the case worker? A. Upon an indication that the recipient, A.F.D.C. recipient is working and is thereby subject to the EDS calculation system, a worker sends corresponding documents into 600 Washington Street, whereupon a card is produced. That goes into the BSO recipient's [50] records, produces an output tape which is then fed into EDS. And that is how they initialize the case in their file.

Q. You say it generates—the BSO computer generates an output tape that's initialized into EDS? A. Camp Hill, yes.

Q. And is that a magnetic tape? A. I believe so, yes.

Q. And when the MIRS system began was output tape generated with regard to the entire initial population that

formed the monthly income reporting system? A. The first pilot office, Roxbury Crossing, the entire recipient independent file was selected, produced on tape and loaded at Camp Hill and EDS.

Q. Do you know how many food stamp households received a reduction in benefits in December due to the 18 percent change in the earned income disregard? A. Yes, I do.

Q. And how many? A. I'm sorry. Do you mean received the notice or actually received a decrease?

Q. How many households actually received a reduction? A. About 16,640.

[51] Q. And how many households received a notice? A. All.

Q. And how many was that? A. Sixteen thousand, six hundred and forty.

Q. Okay. So the same number of households that received a notice received a reduction? A. Yes.

Q. Do you know how many of these 16,640 households are in the monthly income reporting system? A. I don't. I can't answer that specifically, but the general rule of thumb is about one-half. The population of cases that are on the MIRS system, the rate of participation in food stamps is a little less than 50 percent. There's approximately 26,000 cases, therefore there was 13,000 of the potential 160,000 that was subjected to this recalculation. I would guess there may have been as many as 3,000 that would have received notice such as this. It's just a mathematical guess on my part.

Q. Okay. The rule of thumb is slightly less than 50 percent of what population? A. Of the cases that are on the MIRS system. Slightly less than 50 percent could participate in food stamps.

[52] Q. So approximately, and earlier this morning there was testimony that there were approximately 26,000 households in the MIRS computer, approximately 13,000, give or take a few, receive food stamps? Isn't it true that every

household that receives food stamps in the MIRS system would have been subject to this 18 percent change? A. Yes.

Q. Okay. So approximately—I see approximately 13,000 of this 16,640 were in MIRS, and the 3,000 figure was the number that weren't in MIRS? A. No, that's wrong. Why don't we start over again.

We have 26,000 cases on MIRS of which approximately one-half of them participated in food stamps. So approximately 13,000 households of the 176,000 households, that's our whole universe.

Q. Every one of those 13,000 houses in the MIRS system that receives food stamps was subject to the 18 percent change because every one of those receives earned income? A. They were subject to, but not included because the tolerance after the application of the 18 percent resulted in sometimes within the table, resulted for some people in no change.

[53] If you're interested, we had 176,000 subject to the recalculation. Of that, approximately 10 percent had a change, which means that 90 percent after the recalculation had no change.

Q. Now, I understand and I appreciate your clarification. In an average month, how many individual notices of change in benefits with respect to the food stamp program does the Department of Public Welfare send out, if you know? A. I would say — this includes notifications generated by workers?

Q. By workers also. A. I couldn't even guess.

A. In October and November of 1981, was there a backlog or bottleneck at any point in the information collection and entry system regarding A.F.D.C. and/or food stamp benefits?

A. To the best of my knowledge there was no backlog in the processing of data by the Department to BSO. There was during the month of October a backlog of cases and data related to these households that were in the earned income configuration on MIRS.

Q. And what caused that backlog? A. It was in essen-

tially the start-up of the—well— [54] the MIRS system was designed and built to be a pilot for three offices with a maximum of 13,000 A.F.D.C. cases. And we doubled, approximately, the file size and the transaction load. And we encountered significant growth problems by doing that.

Q. And how long did it take to reduce that backlog? Q. I can't say exactly. I would say it took four weeks to deal with that backlog.

Q. Do you know who drafted the first notice that went out in late November, 1981, informing food stamp recipients of the 18 percent change?

. . .

THE WITNESS: I don't know.

Q. (By Mr. Rae) Do you know how many monthly report forms the DPW sends out in the monthly income reporting? Q. All of Roxbury Crossing is on it. That's approximately [55] forty-seven hundred cases. Half of Adams Street which is approximately forty-two hundred. I would guess that somewhere in the order of seventy-eight hundred to eight thousand are sent out. All of Roxbury Crossing, half of Adams Street and half of Hancock Street.

Q. How many people are employed to run that project, approximately? A. Including the local office staff?

Q. No. Including the—how many people are employed at the central locations concerning data input into programs?

A. It fluctuates because of the contractual arrangement we have with a key entry service bureau. It's anywhere from 25 to maybe 35 people.

Q. Is it true that the Department of Public Welfare recently purged from its computer a certain segment of the non public assistance food stamp households? A. Say that again?

Q. Is it true that the Department of Public Welfare recently purged or erased from its computer data a group of non public assistance food stamp households? A. Are you referring to a quarterly—we have what we [56] call a quarterly purge. Once each quarter we determine cases that have been closed

for six months or longer, and/or if the person has died. If the reason for closing was death, we purge the file. Is that what you're referring to?

Q. No. I was wondering if recently due to a mistake some active files were purged from the system? A. I don't know, but I will offer my opinion that that did not happen.

Q. Okay. To the best of your knowledge it didn't happen? A. No.

. . .

[57] Q. Yes. Did the computer recently issue a batch of incorrect ATP's which had a seven added in front of the benefit amount transferring an ATF which would have been in the amount of ten dollars to one that would read seven hundred dollars, if you know? A. Not that I'm aware of.

Q. Now, I believe you testified that it's your understanding that the BSO computer is capable of being modified to generate individual notices concerning the 18 percent deduction. When did you—

Ms. JANOS: Could you be more specific about what you stated he stated the capabilities were?

Q. It's my understanding that earlier in his deposition he testified that the BSO computer programs are capable of being modified to generate an individual notice to the food stamp class in this case which is those households who received a reduction due to the change in the earned income disregard to the 18 percent, notifying the individual household of the actual amount by which their benefits were being reduced.

I'd like to know when you realized that [58] the BSO computer had that capability?

. . .

THE WITNESS: I believe I indicated that one, anything is possible. And, second, with some degree of difficulty that in fact some information could be provided to recipients. That's the assumption that you're reading back to me.

Q. The assumption is that programs could be modified to generate an individual notice? A. Yes.

DEPOSITION OF MARC BENDICK

[4]

Direct Examination

Q. Would you please state your name and address for the record? A. Marc Bendick, Jr. My address is the Urban Institute, 2100 M Street, N.W., Washington, D.C.

Q. Dr. Bendick, could you give us your educational background, and your specialties if any, in the areas that you concentrate in? A. I am a specialist in economics, and the economics of public benefit programs, and the administration of public benefit programs.

My educational background is that I have a bachelor's degree with honors from the University of California at Berkeley, with a specialization in economics and social psychology. I have a Ph.D. in economics in operations research from the University of Wisconsin.

Q. Do you have any other degrees in between? A. I have a master's degree in economics from the University of Wisconsin.

Q. And you mentioned that you have a Ph.D. in economics in operations research from the University of Wisconsin. Was [5] there any subspecialty involved in that? A. Within economics I studied at the Institute for Research on Poverty, which is a major national federally funded research center for the study of public benefit programs, and I specialized in poverty public programs involved with transfer of benefits to low-income people, including all the public assistance programs, and I also specialized in statistics and analysis of large scale data sets, such as census data as used in studies of problems of poverty, and public benefit programs.

Q. And for whom do you work now, Dr. Bendick? A. I work for the Urban Institute, which is a private non-profit research organization, which functions as a research and development center for the federal government, and for also

state and local governments. We also receive money from large foundations, and other public sources.

Q. And what do you do for the Urban Institute? A. My title is senior research associate, and I am in charge of doing research and directing the work of other people in the general areas of human resources, employment development, public benefit programs, and related problems having to do with poverty.

Q. What if any testimony for example may you have given in the course of your work here? [6] A. I've appeared before Congressional committees, as well as state legislative committees, discussing topics such as the efficient administration of public benefit programs. I've appeared before many professional societies such as the American Public Welfare Association, which is the professional society of the state and local officials, who administer programs such as Food Stamps and AFDC. I've been invited to speak at national conferences on the efficient administration of public programs, the prevention of fraud and abuse in those programs, cost-effective methods for operating programs. I made suggestions to Congress on revisions in the law, welfare reform, changes in the Food Stamp Program, and a wide variety of other benefit programs.

Q. What if any consulting have you done for, say other countries, or international organizations, or what have you? A. I've been a consultant on the same topics—that is, public benefit programs and their efficient administration to a number of international foundations. I've represented the United States in a working group at the United Nations on this subject. I have traveled to probably half a dozen different countries of Europe doing research on the subject. I've taught on the subject at a university in Britain, and [7] related activities.

Q. What if anything have you published, and if you have published anything, could you give us a representative sample

of what that might be? A. In the course of my work I've published in professional journals several dozen articles and chapters in books on the subjects I've outlined. I'm also an editor of a complete book on the subject. I've written probably more than a dozen pieces specifically on the administration of efficient operation of public welfare departments at the state and local level, and federal policy affecting.

Q. At this time Dr. Bendick, I would like to show you a document and ask you to look at it. Do you recognize that?

A. This is a copy of a resume describing my background.

Q. And did you prepare that? A. I prepared it.

Q. And is it accurate? A. It is accurate.

MR. HITOV: I believe it's already marked as Exhibit No. 1 for purposes of identification, and I would like to have this now submitted and annexed to the transcript of this deposition.

[8] BY MR. HITOV:

. . .

Q. Dr. Bendick, as I've stated this deals with a welfare department notice, this specific notice is a notice of reduction or termination. What experience have you had studying various notices from welfare departments? A. In the approximately half a dozen years in which I've spent studying public benefit programs, and their efficient administration, I've looked at probably hundreds of notices of various kinds, application forms, processing documents, [9] recertification forms, notices of changes and so forth. In addition to that broad general background, a number of years ago, probably five years ago, I was asked by the Department of Health and Human Services, which was then called the Department of Health, Education and Welfare, to undertake a large study for them of efficient and cost-effective administrative practices in public assistance programs. And in the course of that, I did extensive statistical analysis of the characteristics of appropriate efficient and effective notices for use in case processing in state and local public welfare offices.

Q. Now you mentioned you did statistical analysis. What if any experience and contact do you have with statistics and statistical processes? How often if at all, do you use them in your job? A. Well, I received training in statistical analysis as part of my graduate training, and as part of my routine daily activities as a senior research associate at the Urban Institute I use statistical methods of all kinds routinely, daily.

. . .

[10] By Mr. HITOV:

Q. Dr. Bendick, when you've analyzed earlier notices of whatever type, basically why were you analyzing those notices? What perspective did you bring towards that analysis? A. I was involved in analyzing notices as part of a general program of research on efficient and effective methods [11] in administering public welfare programs. That meant that my interest in the notices, which involved considerations such as whether they fitted in a reasonable way to the full range of case processing that was involved in maintaining a case, whether they permitted—whether they supported the efficient flow of information both from the agency to the client, and from the client back again. Whether they imposed an undue administrative burden on the agency, whether they communicated clearly to the client the information which was necessary for the client to be accurate in reporting to the agency, and for the client to understand the responsibilities that were placed on him as compensation for his receiving the benefits.

Q. And what if anything in a general sense have you found? I understand that you've been talking about notices of all types here, not just notices of change. But what if anything have you found that a notice should accomplish from an administrative perspective? What should its goals be? A. One of the most striking things we've learned in the course of the studies which we did² was that notice, or a notice procedure which did not communicate very clearly to a client what was happening to him, and the basis for [12] why that was happening, obvi-

ously had adverse impacts on the client's sense of security, or the client's concerns about his or her own rights, but it was quite striking that we found that uncommunicative notice processes has serious adverse consequences on the administrative processes within the state and local public welfare agency. What I mean by that is, that when clients were not clearly notified of what was happening to them, a sequence of confused events was set in motion. Unnecessary appeals were generated, unnecessary phone calls were generated to case workers, clients were unable to in many cases provide information which was being requested of them in an expeditious manner, or in the form that was being required. And we found in short that, ineffective program notice procedures, and program notices had serious effects on the cost-effectiveness with which programs could be administered, and the appropriate prevention of fraud and abuse in the programs simultaneously with adversely affecting the well-being of the recipients of the program.

Q. I may have a sense of how you are answer from what you've just said, but what should a notice contain to accomplish its ends, and specifically to narrow it in this case, what should a notice of termination or reduction contain based upon your experience in this field, and if you would, tell us [13] why it should contain whatever? A. It's my opinion that when a recipient of benefits is being informed that his level of benefits is being changed, or his benefits are being terminated that, there are a number of pieces of information that are absolutely essential to communicate to the client. The first would be the reason that the change is being made. The second would be what his benefit levels are prior to the change. The third would be the benefit levels after the change. The fourth would be the exact method by which that change was computed. This all had to be laid out very clearly for the client, otherwise the client is left completely in the dark as to what is happening to him or her, and why, and has a

tendency to approach the agency to seek clarification of the information which is a very costly thing for the agency to handle. And also in the absence of this information, the client is unable really to make an accurate judgment as to whether the change which is taking place is justified or not.

Q. Dr. Bendick, in the case that this deposition is being conducted in regard to, the change that took place was a change that happened to many people, thousands of people simultaneously, what in the jargon of this case at least is being called a "mass change." Are the considerations that [14] you've just been discussing the same, or different, or what are those considerations in regard to such mass change situations?

A. In a mass change situation, in my opinion, exactly the same considerations hold. They are in a sense reinforced by the circumstances of mass change. What I mean by that is, that when an individual client whose case is being changed for some reason having to do only with his own case, receives a confusing notice, the most likely thing that client will do is call the agency—call his case worker to seek clarification. In a mass change situation you are talking about hundreds and thousands of people doing exactly the same thing.

When you get hundreds and thousands of worried phone calls from people literally flooding the agency with requests for clarification, the agency is thrown into administrative chaos, and the normal case processing breaks down. My experience is that a large amount of that concern and confusion can be prevented simply by adequate notice in the first place.

Q. Dr. Bendick, what if any experience do you have with computers, and the administration of welfare programs and/or the delivery of benefits by means of computer assistance? A. I am personally quite familiar with computers and [15] use them in my everyday work. I'm a qualified programmer. In addition, as part of studies of the administration of public benefit programs commissioned by the Department of Health and Human Services, I have specifi-

cally studied the application of computers to the public benefit administrative process as an outcome of the studies that I've mentioned, I was in the position of recommending to the Department of Health and Human Services that the federal government should put some federal money into assisting states to adopt more extensive and more sophisticated computer systems, and also I've made recommendations to state and local governments that they increase the extent of use of computers and sophistication of their use of computerized systems.

Q. The result of your study was that you recommended to HHS, I assume at the time it was HEW? A. Yes.

Q. That they consider grants to the states, and that you made recommendations to the states as well that they investigate and pursue computer delivery of services. What if any premises were your recommendations based upon? A. It was my judgment based both on extensive observation of state and local welfare operations, and extensive conversations with state and local administrators, and [16] statistical analysis of the experience of states which had developed computer systems, that computers are a very sensible instrument for the operation of public welfare programs. They can do the routine processing which is involved in maintaining public assistance cases in a very accurate and efficient way. They can be structured so that they can accommodate to the very frequent changes which occur in public assistance programs. They are ideally suited for the rapid production of mass changes such as in consideration in this case. They are a very flexible and accurate, and rapid sort of general tool for administration, and their record in operation in many states and localities across the country is that they do a marvelous and cost-effective job of running—of case processing public assistance programs.

Q. Dr. Bendick, have you seen and analyzed the notice in this case, dated December 26, 1981? A. Yes, I have.

Q. At this time I would like to show you a document. Can

you identify that? A. This is a xerox copy of the notices dated December 26, 1981, the English language part of the notice.

* * *

[17] Q. Dr. Bendick, relative to the factors that you've just been discussing, how would you categorize that notice? A. As I said before in the course of my work over the last half-dozen years on public benefit programs, I've had the opportunity to look in detail at literally hundreds of processing documents and notices in use in several dozen states, several foreign countries, and I believe that that basis of experience has given me quite a broad opportunity to see the full spectrum of notices. Some of them were of excellent quality, some of them were average and acceptable quality, and some of them were of very poor quality.

And I would say on balance that this notice would fall against that spectrum of what is current practice in a wide variety of states across the country, this notice would fall in the category of very poor quality.

Q. Vis-a-vis what characteristics? What is it that you are evaluating when you make that judgment? A. The first thing which this notice clearly lacks is that it does not communicate to the recipient undergoing a change precisely the sort of detailed information which I [18] stated earlier should be in that notice in order to avoid confusion—that is, it does not tell the recipient what his prior to change benefit level is, what his after change benefit level is, the basis for the change, exactly how the change was computed, and precisely it does not walk him through the steps of how that change was made so that he can understand whether he agrees with the information used in the computation.

Secondly, even setting aside the question of content, this notice is written at a level of language that in my judgment is very difficult for the average—No, I would say impossible for the typical public assistance recipient to understand, that is, it

is written with long complex sentences, large words—unnecessarily large words, the use of jargon, as well as rather unclear wording in complicated modes of expression. So it would be very difficult for a typical food stamp recipient to understand the point that it is trying to make.

Thirdly, I would say that the general layout of the material, the size of type, its layout on the page, and so forth, is not very easy to read physically.

Q. How, if at all, could it be improved? A. Well, the first thing I would do would be to insert the information which I have stated is essential for communication [19] of what's happening in the change. That is, I would have it state for each client individually, the prior to change level of benefits, the after change level of benefits, the basis for the change, the exact method of computation.

Secondly, I would see that the notice was reworded so that it would be written at a level of complexity which would match the educational—the literacy skills available in the food stamp recipient population, by which I would say that it should be written at a level which was readable—understandable by somebody with a sixth grade reading skill.

Thirdly, I would make other changes in the physical layout of the notice so that the print was larger, the lines were shorter, the paragraphs were better spaced, and it was generally physically easier for the eye to follow.

Q. Dr. Bendick, these changes that you have recommended or suggested, what if any benefit— Or, it's fairly clear from what you've stated the potential benefit that that would have to the recipient of the notice. What if any benefit would those changes have to the administrator, to the agency administering the notice, sending it out? A. It's without question that if clients are accurately and fully informed of changes that are going on in their case, then all that will be necessary is a written notice to [20] them in the majority of cases. In cases where a written notice is inadequate or too complicated to

read, doesn't contain the necessary information, the typical response of a client receiving a notice of change is to become quite concerned about his case, he's likely to call his case worker, or call the local agency to find out what's happening in his case, he's likely to visit the agency. A large amount of traffic is generated, and phone calls are generated, which, assuming in the majority of cases, the only problem is confusion and lack of information. All these trips are unnecessary, and all these telephone calls are unnecessary.

In addition, many clients receiving a notice that something is happening to their case, but not being told what is happening or why it's happening, are likely to file appeals in the case, generating a large number of appeals where they are filing for appeal simply to protect their rights in an effort to get information which they should have received in the first place. So bad notice generates a large amount of very costly case processing, it ties up eligibility workers, and generates administrative difficulties in the agency, all of which could have been avoided if adequate written notice had been provided in the first place.

It seems to me that I recall—on page 2 of this [21] notice, in Exhibit 2, there is the sentence:

"If you have questions concerning the correctness of your benefits computation or the fair hearing process, contact your local welfare office. You may file an appeal at any time if you feel that you are not receiving the correct amount of food stamps."

That of course, is a very appropriate sentence to have there. The point is, in the absence of adequate notification, many, many clients will feel forced to take those steps; contact the local welfare office, file an appeal. Where in fact, all they are really asking for is the kind of information that they should have been supplied in the written notice in the first place.

* * *

[22] Q. If it is in fact the case that this notice cannot be improved upon by the Massachusetts Department of Public Welfare using the computer system that they now have, what if anything is your opinion of that system from an administrative viewpoint? A. Having looked at literally hundreds of notices, from literally dozens of states and localities around the country, I would say that I've seen many instances where [23] departments, computerized or uncomputerized have done very much better jobs of generating notices of change. It's well within the state of the art. It's something which computerized systems handle very well, and localities that aren't computerized, there are other ways of doing things that achieve the same results.

If a state or local administrator said to me that their system was designed such that this was the only kind of notice that they could generate, I would say that there was something seriously wrong in that system; that somehow they are unable to achieve what public assistance administrators across the country achieved—what computerized public assistance programs all across the country achieve everyday.

Q. If however, that is the best, or that is the notice that's perusable without any further improvements from the system itself, do you have an opinion about the adoption, or the administrative decision, not from the clients' viewpoint, but rather from the viewpoint of the administrator of the system, do have an opinion of that decision to adopt such a system? A. Any system which has been put in place where this would be the only kind of notice that it could generate would be a very cost-ineffective system for the reasons I've [24] discussed earlier. It would be a system that would be very prone to serious administrative problems, and any administrator who set the system up that way, or any administrator who bought a computer system, or programmed a computer system, and if this was the only kind of notice that it could have generated, I would say has made a very serious administrative error in the establishment of that system.

Q. I would like to show you another document at this time. Would you look at it, and tell me whether you can identify it? A. This document is a copy of an article entitled, "The Literacy of Welfare Clients," which I wrote and published in the *Social Services Review*, which is the leading professional journal among persons involved in the administration of social services and benefit programs. It's published by the School of Social Service Administration of the University of Chicago.

Q. And with what does the article on the study deal? A. The article is a study of the literacy skills which are possessed by the low-income population in the United States, and the literacy skills which is required by the various public assistance case processing documents in use in public [25] assistance programs across the United States.

. . .

Q. Dr. Bendick, what if anything did your study as recorded in that article show relative to reading levels vis-a-vis actual literacy levels? — I'm sorry, you couldn't answer that question since it didn't make sense. Education levels, i.e., the last grade reported finished by respondents and their actual literacy or reading level? A. Well, it's well-known that the low-income population in the United States, including individuals who are recipients of public benefit programs such as food stamps are less well-educated in general than the total United States population.

That means that they have—"they" the low-income people have completed fewer years of schooling than the general population. But that finding is just the beginning of understanding their actual literacy skills which are available among low-income people, because it is well-established in the educational profession that among low-income people, and among the population in general who tend to become school drop-outs, that actual reading skill levels possessed by [26] those individuals fall quite far below their nominal grade completion level. That is, someone who supposedly completed the

11th grade, probably reads at two, three, or four years lower level than the 11th grade. He might read at the 7th or 8th grade level for example.

Q. In your study Dr. Bendick, did you look at literacy rates as they relate to error rates, and if you did, what were your findings regarding those? A. Yes, we did some statistical analysis of the relationship between literacy problems, reading comprehension problems, and the error rates observed in public assistance programs. By "error rates" we mean the rates at which public assistance benefits were either given out to people who were entirely ineligible for program benefits, or the extent to which benefits were given out in incorrect amounts to people who were eligible for some level of benefits, but not the level that they were given. In some cases—the majority of cases, the amounts they were given was higher than they were entitled to; in some cases it was lower than they were entitled to.

And as a final finding of error, we looked at incorrect denials. That is cases where individuals who were actually entitled to program benefits were denied benefits. [27] We found that there was a strong statistical relationship between the literacy level possessed by public assistance clients and the error rate. That is, the more reading and literacy problems that a client population had in a locality, the higher the error rate tended to be in the agency. We interpreted this to reflect the difficulties which clients experience in trying to report in a timely manner, and accurate manner, and give full information to agencies when they had difficulty understanding, reading, and comprehending the various processing documents that were involved with their cases, including application forms, change notification forms, lists of documents they had to bring in to provide documentary evidence in support of their application and so forth.

Q. Dr. Bendick, a term that is somewhat in vogue now days among government personnel is that of the concept of the

"truly needy," and I've noticed in your article that you actually mentioned that phrase some years ago it seems, since this article is a few years old now, probably before it came into vogue. I'm not certain what you meant by "truly needy," so perhaps you could first tell us that, and then tell us what if any relationship you found between serving the truly needy, however you define that term, and complex [28] notices or forms? A. Operationally what I meant by "truly needy" in this article was those who were legally entitled to a certain level of benefits from a public assistance program.

To me it was a draft away from the principle of providing benefits only to the truly needy, when money was given to clients who were ineligible for program benefits, when too high benefits were given to clients who were entitled to some benefits, but not the level they had been given, or on the other hand, when clients were turned away and given no benefits, when they are in fact legally entitled to them.

Our statistical analysis clearly demonstrated that objective of targeting the benefits on those who are legally entitled to them, accurately administering the program, doing so without undue administrative burden on the agency, all those objectives were seriously adversely effected when case processing documents were written at a level of language—if use of words and complexity of sentences that made it impossible for the majority of the recipients of the program to understand the information that the document was supposedly communicating to them.

Q. At this time Dr. Bendick, I would like to draw your attention to pages 62 and 63 of the article that we've been [29] discussing, "The Literacy of Welfare Clients." What do you find there? A. On those pages I quoted three examples of the text from actual case processing documents in different programs and different localities. I put them in the article as examples of the sorts of language that public assistance clients would have a great deal of difficulty understanding, the kind

of language which contributed to the administrative problems and the failure to provide the benefits accurately to the truly needy, which was the subject of the article.

Q. What literacy level do those notices require? I understand there are three of them, so if you would give me an answer for each of those? A. Yes, there's a quotation from a notice for the Section 8, Rent Supplement Program, which was written in a level requiring the reading skills of a college graduate. There is a quotation from a Medicaid form used in the District of Columbia which requires the reading skills of a person with some college education, although not a college graduate. And the third sample is from a form used in Maryland for recipients of social services, and that also requires the reading skill level of a college graduate. I should put that in context by saying that the thrust of the article was to say that the [30] public assistance population in general should be judged to have reading skills at no higher than an eight grade level, so the gap between an eight grade level of reading skills and those of a college graduate or a person who attended college was a very large gap indeed.

Q. And how does the notice of 12/26/81 in this case, I believe it's marked Exhibit 2 herein, compare to those that you've listed in the article in your opinion in terms of difficulty? A. It is my judgment that the notice in this case is of a comparable level of difficulty, and by that, I directly mean incomprehensibility as the examples which I cited in the article. In fact, if I had had this food stamp notice in hand at the time I wrote the article, I would very seriously have considered quoting from this notice as an example of very bad administrative practices, and considered using a quotation from this notice in this article.

Q. Dr. Bendick, what if any agencies do you know of that have changed their notice practices based upon this article that we're talking about, "The Literacy of Welfare Clients"? A. I have been consulted by quite a number of

state and local public welfare agencies across the country concerning [31] their application forms and notices, and other case processing documents. I've given a number of speeches, and training sessions for public welfare administrators on the subject, and I've heard informally from those people that quite a number of different states and localities have modified forms and procedures based on the information which I presented to them.

In addition, the *Federal Register* of August 20, 1981 reports that the Social Security Administration revised its change notification forms used in the Supplemental Security Income Program so that all the notification forms were readable at the sixth grade level, and that according to the *Federal Register* of that date, the specific basis they used for picking the sixth grade level as the appropriate level for the notification document in that program was the research work which I did, and which is reported in the article marked Exhibit 3; they cited the article by name.

Q. I believe you mentioned in answer to my last question that the Social Security Administration had revised their notices to the sixth grade level. And what is your opinion of the effectiveness of that grade level from an administrative viewpoint? A. I was very pleased that they picked the sixth grade level, I felt that that really was the most appropriate target [32] for writing of case processing documents. In the article marked Exhibit 3, I refer to the eight grade level as an absolute upper limit of what should be acceptable for public benefit program processing documents, but I would be much happier with a sixth grade level. I believe that that sixth grade level is low enough to capture a vast majority of the clients of the programs—of the public benefit programs, at the same time it is still something which is quite feasible for agencies to deal with. It represents a very appropriate trade-off between administrative considerations and client accessibility considerations.

Q. Dr. Bendick, what if any information did you gather at the Plaintiff's request for this *Foggs* law suit? A. I was asked to use Census Bureau survey data to estimate the literacy skill levels available to recipients of food stamps in the State of Massachusetts.

Q. Did the information you had access to offer— What information did it offer you? Did it offer you access to information regarding literacy levels, or did it offer you information regarding education levels, or what? A. The survey data which are available offered information on the years of school completed by food stamp recipients in Massachusetts. As I said before that data is a starting [33] point for figuring out literacy levels, but it had to be adjusted downward to take account of the fact that persons of relatively low educational levels generally do not function at the reading skill level of the grade that they have nominally completed.

Q. And how many information searches did you pursue at this request? A. I did two separate computer runs.

Q. And could you identify them? A. In the first computer run we generated data concerning all food stamp recipient households in the State of Massachusetts. In the second computer run, we generated the same data, but for those households among all food stamp recipient households in Massachusetts who had earned income.

Q. Could you for purposes of describing this data, could you run through the process that you went through to retrieve it? A. Yes. The data we were working with was from a survey called the Survey of Income and Education, which was a special survey of 150,000 families nationwide, of whom some 6,000 were in the State of Massachusetts. It was a special survey commissioned by the United States Congress and carried out by the Census Bureau for the purposes of getting highly [34] detailed information on the characteristics of public assistance recipients in each state. It's the most recent, and most detailed, and best regarded data set for finding out

detailed information on public assistance recipients within as small an area as a state.

Q. And how did the Urban Institute, if in fact it did, come by this information? A. The Urban Institute possesses the computer tapes on which this information is stored. We use them in the course of our everyday business for research which we undertake under contract from the Department of Agriculture, the Department of Health and Human Services, and other federal agencies, as well as state and local agencies. We obtained the data directly from the Census Bureau who had gathered the survey data in the first place.

Q. In what form did you obtain that data from the Census Bureau? A. We obtained it in computer tape form.

Q. Does that mean that the computer reads the data directly? A. That's right.

Q. I'm not certain I understood you. Is this data used regularly in the normal course of institute business? [35] Yes. This very same data set is used by the Urban Institute in performing research for federal agencies such as the Department of Agriculture, in preparing information for the United States Congress, in preparing its research which is published widely in professional journals and in books.

Q. Keeping in mind that you have lay-people sitting here at the table with you, and will have lay-people reading your answer, could you explain how if at all, the Census Bureau study and your program extract of the information from that study attempted to allow for accurate extrapolation if it did from the sample to the whole? A. The survey of Income and Education actually interviewed only a small number, I said 6,000 households in the State of Massachusetts. That's a large number of households, but still is far less than all the households in Massachusetts.

The Census Bureau using its expert statisticians prepares what they call weighting factors, which are numbers which are used to multiply by the answers you get off the survey tape

to essentially blow that answer up, so it represents the answer that would have been obtained if the Census Bureau had gone out and interviewed every family in the State of Massachusetts. So for example, in the data which I extracted [36] from the Survey of Income and Education, we had data from 315 households receiving food stamp benefits in the State of Massachusetts, but using these weighting factors provided by the Census Bureau, we were able to blow those answers up so that they represent the answers which would have been given by the approximately—I believe it's 99,000 households in Massachusetts who receive food stamps.

Q. Is this the kind of data that's normally relied upon by people working in your field? A. Yes, this survey as I said is used regularly by the federal government, by research organizations such as the Urban Institute, by researchers at universities, and by all those working in the field. The United States Congress commissioned this particular survey, the Survey of Income and Education in 1976, specifically for the purpose of working out some formulas by which federal money could be allocated to states and localities. So the federal government is relying on the results of this survey in the way that they hand out millions and billions—literally billions of dollars of federal money. Similarly the information has been used in estimating the cost of various welfare reform proposals, or changes in the food stamp program. The Department of Agriculture in particular uses information from this survey to [37] estimate the effect of changes in food stamp laws and regulations, make estimates of the changes in the caseloads and the cost of the programs that would result.

Q. Dr. Bendick, what if anything do you have to illustrate the results of your searches? A. I prepared a table.

Q. You say you prepared a table. Would you please look at this document; do you recognize it? A. This document contains—it reports the data which I extracted from the Survey of Income and Education concerning the years of school com-

pleted by food stamp recipient households in Massachusetts.

* * *

Q. Dr. Bendick, would you, using the chart for reference, explain the results of your search? A. Well, there are a lot of numbers on this table, so let me just point to the key ones. First of all, in column "A," we report the total number of Massachusetts food stamp households, and this is again as of the year 1976. The numbers have changed slightly, but they are essentially the same today.

[38] According to row 7 in column "A," there are 170,000 of those households. A few minutes ago I said, 99,000, I was confused. According to column "B," row 7, there are 99,000 households receiving food stamps in Massachusetts who have earned income. There are 170,000 households who receive food stamps in Massachusetts whether they have earned income or not.

Now, it's my understanding in this case, it's actually the 99,000 households who have earned income, and receive food stamps, who are the sorts of households who have received the notice in question in this case.

What I've done in the rest of the table is to indicate the years of school completed by the heads of those households. I've reported it both for all Massachusetts food stamp households with earned income, and for all Massachusetts food stamp households whether they have earned income or not.

The table indicates that— Well, let me point first to column "F," row 3, which is the most important number of the entire table. That column is the cumulative percentage of Massachusetts food stamp households with earned income, the kind of households that would have received this notice, who had years of school completed of no more than eleven. [39] That is, these were not high school graduates. These were people who had either completed just elementary school, or the ninth grade, or the tenth grade, or the eleventh grade. They are not high school graduates. According to the table, in row 3, column

"F," 45.8 percent of all Massachusetts food stamp households with earnings fall into that category. That is, approximately rounding just slightly, approximately half of all food stamp households in Massachusetts have completed at most eleven years of school.

Now, let me repeat of course that this is years of school completed. This is not literacy levels. The literacy levels will be lower than that because of the factor we've been talking about before, which is people who become high school drop-outs eventually fall behind their grade level before they drop-out. But just looking at the moment at the nominal years of school completed, approximately half of the heads of households have completed no more than the eleventh grade.

If you look in the same row for column "E," we get the comparable number for all Massachusetts food stamp households whether they have earned income or not, and the number there, rather than the 45.8 percent that I've just quoted, the number there is 50.2 percent, it's a little bit [40] higher, but not substantially higher as these things go. Still—the pattern you see is still that about half of food stamp recipient heads of households are not high school graduates. They only have elementary school, or some high school, or up through the eleventh grade, but no more than that by way of formal education.

If you look at the next row of the table, that is row 4, you get the number for high school graduates. And again these are cumulative percentages for all Massachusetts food stamp households is 81.7 percent, have either less than a high school education, or they've completed high school, or high school graduates. 82 percent of the Massachusetts food stamp households with earned incomes have reached that level.

What that says is that only about 18 percent, whether you look at households with earnings, or ignore that factor and look at all the food stamp households, it would be about 18 percent of the Massachusetts food stamp households have any

post-high school education, nominal education. 82 percent of them approximately have high school credentials or less.

Q. Dr. Bendick, you've referred a couple times, and earlier you alluded to the basis of those credentials, but you've [41] referred to the difference between educational levels, and actual literacy or reading levels. What if any experience do you have with studies correlating educational levels of public assistance recipients with actual reading or literacy levels of those recipients? A. As part of the study which is reported in the article marked Exhibit 3, in Table 2 of that study, I list the five different studies which were done addressing the issue of what happens—what are the differences between actual reading skill levels of high school drop-outs and eventual high school graduates.

Q. Are you familiar with the methodology used in those studies, and if so, were they accepted methods, and how significant was the data that they produced? A. These studies are very large scale, major federally funded studies of this subject, and represent the state of the art as far as the profession is concerned, or what is known on the subject.

Q. Would it be the type of data regularly used by experts in the field? A. Yes.

Q. Now to be a little more specific, what did those studies show about the relationship between the last grade [42] finished by a recipient of assistance, and that person's actual reading level? A. Each one of these five studies clearly illustrated the pattern which I stated earlier, namely, that a person who is going to become a high school drop-out starts to fall behind his classmates a long time before he actually drops-out, so that for example, to cite just one example, one of the studies in the table, the one marked "Gates Reading Test," shows that in the tenth grade, there was already a 1.8 year skill level difference—reading skill level difference between eventual drop-outs and eventual graduates. That is, in the tenth grade, individuals who are destined in the future to become high school

drop-outs were already reading at approximately the— Had already fallen behind so they were reading at approximately the eight grade level, rather than the tenth grade level, which was the grade in which they were enrolled.

Applying this pattern to the sorts of data which I developed in the article in Exhibit 3, I concluded that all individuals whose nominal years of school completed was less than high school graduate, should be assumed to have reading skills levels at no higher than the eight grade level.

Q. Did any of the studies in the article, "The Literacy [43] of Welfare Clients," question actual high school graduates?

A. Yes. The same pattern actually extends even through high school graduates, particularly those who eventually fall into the low-income population and become public assistance recipients. The data is somewhat scanty here, but what studies have been done, showed quite clearly that when you are talking about a public assistance recipient who is a high school graduate, typically that person cannot read at a high school graduate level. He may be several years lower than that. In particular there were some studies done in the State of Illinois that are cited on page 59 of that article that indicated that public assistance recipients on average fell behind their claimed years of school completion by as much as 4.3 years. And so again, if you're talking about a high school graduate public assistance recipient, and apply that 4.3 year figure, you would make the assumption that that person quite probably cannot read at more than an eighth grade level.

Q. Based on your review of the data listed on the chart, which I believe is now Exhibit 4, and your knowledge of the correlations which you've just discussed, what should the reading level of the food stamp notice at issue here have been in order to have been administratively effective? [44]

A. Well, looking at row 4, columns E and F of Exhibit 4, I see the number 82 percent approximately in both columns there as the percent of the food stamp recipients in Massachusetts who

have high school or less education. As I've said based on the research that I did, my judgment is that those people typically can read at no more than an eighth grade level. We are talking about 82 percent of the total population of recipients of this—potential recipients of this notice.

It seems to me that an absolute maximum of an eighth grade reading level should be presumed in the notice shown in Exhibit 2—that is, no notice should have been sent out written at a level not accessible to something like an eighth grade reader. I would say preferably at a level accessible to a sixth grade reader. But an absolute maximum, no more than an eighth grade level, because otherwise you are leaving out more than four out of five of the recipients of this notice.

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[45] *Cross-Examination by Counsel for Defendants*

BY Ms. JANOS:

XQ. Dr. Bendick, you had stated that you had written a book on the subject early on, and I just was wondering if you could point out in your resume that book to me? A. The book is entitled, *Housing Vouchers for the Poor*, and I'm actually the editor of the volume, and it concerns an experimental program of housing allowance of public benefits for low-income people, specifically earmarked for rent payments. The subject of the book is both, how does the program work, and how should it be administered.

XQ. What was the name of your HHS study, or have you done several studies for HHS? A. We've done several studies. The one I've been referring to most frequently was published as an Urban Institute report which is listed in my resume as, "The Anatomy of AFDC Errors."

XQ. And was it in the course of that study that you examined the hundreds of notices from different states? A. It was in the course of that study that we did the main part of that,

although for a miscellany of other projects, I've examined quite a number of other notices, but that was the main work. [46] XQ. And when you say you've examined a number of notices, have you examined notices in every different type of welfare benefit program? A. I suspect it's virtually everyone.

XQ. You've certainly examined notices in the food stamp program, is that correct? A. Food stamp, WIC, AFDC, supplemental security income, regular social security, disability insurance, home heating and fuel vouchers. I could go on for about a half a dozen more I think if I thought about it.

XQ. Dr. Bendick, do you do any private consulting work as well as research for the Urban Institute? A. Yes, I do.

XQ. And could you just give me an example of the type of consulting work you've done? The type of private consulting work you've done? A. Well, the reason I will be in Accra, Ghana is that I will be acting as a consultant to the World Bank, evaluating a proposed investment on their part, an employment and urban development scheme that they have proposed for the City of Accra.

XQ. And you've stated you've done some consulting work for different states as to the administration of their benefit [47] programs? A. Yes.

XQ. What states are those? A. I can list the ones I can remember offhand. South Carolina, Georgia, Michigan, Illinois, Pennsylvania. They don't include Massachusetts, but over the course of the years, I've probably dealt with some two dozen states.

XQ. And the general nature of your consulting work is what? A. Well, it's varied in a number of cases, but the general nature of what I've been a consultant on is ways to administer benefit programs in cost-effective ways, and that involves a number of considerations such as keeping the administrative burden of the program, the administrative costs of the program within reason, meeting federal fraud and

abuse targets, and avoiding abuse of the program by clients, insuring client accessibility to the program, and the maintenance of client rights. I've been involved really in virtually every aspect of the full range of considerations which get traded off in setting how programs operate.

XQ. Dr. Bendick, with regard to Exhibit No. 2 I believe, the Massachusetts notice. You stated earlier that you examined this notice to determine the level of comprehensibility and [48] readability of the notice. In your answer you stated a number of factors. Does your answer Dr. Bendick apply to both page 1 and page 2 of this notice? A. Yes.

XQ. So you examined page 1 and page 2 as a whole if you will, and made your determinations upon that? A. Yes. I looked at the notice as a single document.

XQ. Looking for a moment Dr. Bendick at page 2, could you tell me whether your opinion would change if page 2 were the only page that was received by the food stamp recipients? A. Well, I would say that page 2 just as a document in its own right is as difficult to read as page 1 and page 2 together, and in that sense, suffers from some of the defects which I mentioned before.

XQ. I understand Dr. Bendick that page 2 as well does not have the kind of detailed information that you testified earlier you think is necessary for notice of this type— A. That's right—

XQ. Could you just point me to the specific language on page 2 that you find troublesome in terms of comprehensibility or readability? Any particular words on page 2, any particular words in there that you think present more difficulty than others? [49] A. Well, I suppose I could go through the entire document word by word, but let me just point to a few examples that jump off the page at my eye. In the second section where it says, "Your right to a fair hearing," in the second line they use the word "reinstated." It strikes me that "reinstated" is a rather complicated word not found in the vocabulary of

very many not very well-educated people, and that would be quite a confusing term. It's rather central to the meaning of the sentence.

A second example which strikes me is at the top of page 2, where the first sentence is describing that, "The earned income deduction for food stamp benefits has been lowered from 20 to 18 percent." That's a very difficult concept in a way to grasp, because what you're talking about is a lowering of a deduction, which is a raising of your net income, which in turn leads to a lowering of your benefit. That's exactly the kind of thing that needs spelling out in great detail before someone who has relatively little education can follow. Here it's simply rather cryptically referred to, crammed into one sentence.

XQ. Is there anything else on page 2 that you think presents some difficulty? A. Well, as I say, my opinion is that the whole package [50] together is not comprehensible at the level that is needed to communicate to the clients. I could if you would like, go through each and every sentence and try to give a very comprehensive list, but I'm not sure that that would serve a good purpose. What I've given you is two examples—

XQ. Could you just give me one or two more examples and then I will go on? A. All right. This is again in the lower half of the page, "Your right to a fair hearing." The sentence on the page reads, "If your appeal is denied, the department has the right to recover from you any added benefits which you have received during the appeal process." Again, that's one of these complicated things where you are talking about pulling back something, which is an added benefit on top of some amount which would be your normal benefit, and then in order to understand what the sentence is reading, you also have to have in mind the concept you are talking about, a period of time, the appeal process during which the appeal is going on.

It strikes me again, that's a multi-part concept that is not easy for a person to follow, jammed together in one sentence. If it was spelled out in a whole series of very short sentences, and basically the arithmetic was done [51] before the client's eyes, that would be something that could be made comprehensible. As it stands now, it's the kind of thing where when I read it, and I've spent the last six years studying the designing these programs, I had a hard time thinking through exactly what that meant. I had to pause and think about it.

XQ. Is there anything else on here? A. I gave the example of the word "reinstated" as a vocabulary word that I felt was not in common use, and which does have common synonyms that would be much more comprehensible. Just looking around the page I see a number of other words which I would think would fall in the same category, "terminated" seems to me such a word. "Accordance," seems to be such a word. The phrase, "appeal is denied," there must be a simpler way to say that you've been told "no." Are those sufficient examples?

XQ. Yes, they are. So that in your opinion it's just with respect to page 2, the difficulty arises from the vocabulary as well as the sentence structure, as well as the format, is that what you testified to earlier? A. Yes, it has all those defects, and then of course, the defect that there's simply missing information.

XQ. Have you had any educational training yourself in [52] reading—I don't know what you would call the field, I guess in reading, or as a reading specialist? A. No, I have not.

XQ. Dr. Bendick, you have a chart here on the educational levels of food stamp recipients in Massachusetts generally, and food stamp recipients with earned income, the data is for 1976. Does the Urban Institute have any more recent data available to it? A. No, no more recent data at this level of detail exists. I believe that the data would not be significantly different if a survey were done in 1982, but the fact of the matter is that no such survey has been done.

XQ. Dr. Bendick, if you were to advise the State of Massachusetts at this point in these proceedings with respect to the changes that occurred last November and December, and the notices that went out, from a cost-benefit basis, how would you advise a new notice to go out to explain what has happened, or to clarify the situation for the recipients at this point in time? A. I'm not sure that I have the full range of information that I would need to fully answer that question, but I will hazard the opinion that since there are issues of retroactive benefits, and retroactive pulling back of benefits already [53] distributed and so forth, that there is no substitute for supplying a full, detailed, accurate record of changes to individual households to clear up the full course of the changes that were made, and the benefits that were paid in accordance with those changes as well as their current eligibility—the payment levels. So I would think that the most appropriate thing to do would be to supply the full set of information that should have been supplied in the past, plus what should be supplied as though the changes were taking place today.

XQ. With an accompanying explanatory notice as to what—
A. As to what all that garbage is?

XQ. Yes. A. Yes. I would definitely think that that would all have to be supplied.

XQ. Are you familiar with the 1981 Omnibus Reconciliation Act? A. Yes, I am.

XQ. What were the changes that were required in various benefit programs as a result of that Act?

* * *

[54] A. There were changes made in a number of eligibility criteria for benefits. There were changes made in benefit reduction rates. There were changes made in work registration requirements, and they involved a variety of different programs, including food stamps and AFDC most prominently, but a number of other programs as well.

XQ. And are you aware of the federal time limitations on implementing the act? A. Yes, I am.

XQ. Are you familiar with the Massachusetts Welfare Department? A. Not in a highly detailed way, no.

XQ. You don't know its annual budget? A. No.

XQ. Or its staff size? A. No.

XQ. Or the number of departments it has? A. One of the documents which I am the author of is called the "Public Assistance Data Book," in which I compiled the first national compilation of that sort of data, and [55] I would be glad to look all those things up. But I certainly don't carry them around in my head, there being several hundred of those sorts of variables, and more than fifty states.

XQ. Do you know what type of computer the Massachusetts Department of Public Welfare uses? A. No, I do not.

XQ. Or its computer availability if you will? A. No, I do not.

XQ. Dr. Bendick, I believe you testified earlier that your opinion as to the type of notices welfare departments should issue in all types of benefit programs would be the same for individual changes in a person's benefit as well as mass changes, is that correct? A. Yes, that's correct.

XQ. So that it's your opinion for every mass change, and I use the word "mass change" in the sense that it is used by the federal regulations, and Massachusetts has similar regulations, for every mass change in the law, or in certain benefit programs, a state agency should be sending out a notice—the kind of detailed notice that you described earlier, is that correct? A. Yes.

[56] XQ. Do you know how many mass changes there are in any given year across the board in various benefit programs? A. To the best of my knowledge there is not a great deal of information known precisely quantifying that. One study which I can cite is one done in the State of Tennessee, in fact it was done in the context of their examining the

question of whether they should computerize their system or not, and they determined that there was one significant mass change somewhere in the various benefit programs administered by the Tennessee Department of Public Welfare occurring about once a week. So the public welfare environment is an environment of constant change occurring not only in individual households, but changes in the regulation and changes in the law.

XQ. You stated earlier that it was your opinion that a computer system can adequately and properly administer a welfare program of a state, is that correct? A. Well, normally the computer is a central part of it. In a computerized system, nowhere is the thing totally automated, but a computerized system means that the computer takes over a large part of the routine processing, with the so-called case worker, or eligibility technician doing a smaller amount of the routine case processing than in a [57] non-computerized system.

. . .

XQ. Dr. Bendick, obviously there are many different types of computer systems that a state would have available to it, or that a state would own, is that correct? A. That's correct.

XQ. Would you agree that certain types of computer systems are more adaptable to an overall administering of a program as opposed to handling bits and pieces of administering a welfare program? A. Across the fifty states there's a wide variety of degrees of computerization done in an incredible variety of ways. In some cases, states have gone to a highly integrated system in which the computer handles a very broad range of case processes. In other cases, the state is computerized to only very specific mechanical things, such as check writing. In some cases, states have gone to very large centralized [58] computer systems, say located in the state capital and running the entire state; in other cases, they have decentralized it at county level, where there's either a dedicated computer used for the welfare department only at the county level, or the county welfare department shares the computer with other departments of the county government.

In some cases, localities are now even using these little mini-computers which are no bigger than a desk. So in answer to your question, I think there's almost no universal answer. There have been some great success stories with almost every arrangement you can think of, and almost every type of computer you can think of.

XQ. And would those success stories be affected by the numbers of welfare programs the state is administering for example? — For instance, a state that's administering twenty different welfare programs for many hundreds of thousands of people might need a different computer capability than a state that is administering three or four different benefit programs for a much less number of people? A. That's obviously true.

XQ. Have you advised different states as to the cost of automating their welfare benefit program so as to bring about the kind of cost-effectiveness that you've discussed earlier? [59] A. My particular basis of consulting is not to go around as an advisor to states for specific computer systems. That's a specialized expertise, which is not my expertise.

XQ. In your opinion would it be advisable for a state to have on staff a reading expert to go through the various notices that are sent out to determine, or to insure a certain level of comprehension on that notice? A. In many public forums, including testimony before the United States Congress, training sessions and speeches to the national meetings of state and local public welfare administrators I have advocated that all the states and all their programs be very sensitive to the problem of the ability of clients to understand notices and case processing forms, and have recommended that they bring in reading experts to go over their current set of notices and processing forms, and redesign them as appropriate. Whether that should be a full-time in-house person as you've just suggested, or whether that person could most appropriately be brought in as a consultant would depend a lot on how big the state is, and how much work there is and so forth.

XQ. Do you know how many states would have their notices for all different kinds of welfare programs in the sixth grade comprehensible form? [60] A. I don't know, and nobody knows. No systematic study has been done of that. The Social Security Administration has as side program, which is the instance which I have cited before for having gone to the sixth grade level, operates nationwide. It is a federal program, and operates in every locality of the country, and certainly indicates the feasibility of doing that sort of thing in virtually every circumstance. There is no study of exactly what the local welfare departments have done with their own forms.

XQ. You stated earlier that one of the problems you had with the Massachusetts notice was the format of the notice. Would you advise the state against using a card as opposed to a—full piece of paper?

. . .

THE WITNESS: Because I am not an expert on typography or format, I can't really testify in detail. What I can [61] say is that from the point of view of a qualified expert on case administration, and looking at the notice from the point of view of how it would be handled by clients and so forth, I would think everything being equal, it would be nice to have the information on one page, so there aren't so many different pieces of paper flying around, but that's hardly the most important consideration here. The things like the size of the type which is quite small—

BY MS. JANOS:

XQ. No, I wasn't asking about that. I was merely asking about the card itself? A. As far as I'm concerned from the point of view of case administration, it would be nicer if it weren't on a card, but if there are constraints that force it to be on a card, that that by itself is not a fatal flaw in any sense.

XQ. You referring in your article to several tables which showed a—I believe it was Table 2 and Table 3, which were correlations between literacy levels and education levels? A. Table 2.

XQ. Table 2, and that's not your particular study. You adapted that from someone else's study, is that correct, or is it several studies? [62] A. That is a summary of five different large scale studies, none of which I participated in; this is in Exhibit 3, Table 2.

XQ. Are the full titles of those studies noted in your notes at the end of the article? Any other reference to the studies themselves, when they were conducted, or by whom they were conducted? A. The full details of these studies and their implications for actually literacy levels is worked out in the study which I footnote in Footnote 2, which is a doctoral dissertation entitled, "The Economics of Compulsory Schooling," which was completed at the University of Wisconsin in 1976, and in that document you will find the full details of exactly what each of those five studies did.

XQ. And we've been talking this afternoon general about welfare programs which would include AFDC, food stamps, and other types of welfare programs. Would your answers apply across the board to all welfare programs? A. The general pattern of the answers applies to all those programs, and the article marked Exhibit 3 is in fact written in terms of all the programs together. The data in Exhibit 4 is specifically for food stamps, and basically indicates that all the general patterns shown in Exhibit 3 [63] hold precisely for the food stamp program in Massachusetts in this specific case.

XQ. Dr. Bendick, you've just stated earlier that you were not familiar with the specifics of the Massachusetts food stamp program, and other welfare programs. Do I understand then that you are not familiar with the kinds of administrative changes that were going on in Massachusetts during the period of time that this notice was developed? A. Well, the food stamp program is a federal program which is operated in a uniform manner nationwide, and the particular changes which are at issue here are those triggered by the Omnibus Reconciliation Act which you mentioned earlier which is a

piece of federal legislation. And therefore, what's going on in Massachusetts with some minor modifications is essentially what's going on all across the country.

XQ. The kinds of changes pursuant to law that the welfare department had to make? A. That's right.

XQ. In your opinion Dr. Bendick would the sixth grade or eighth grade level that you feel is optimal apply to all notices under the food stamp program which would include initial application, increase in benefits, decrease in benefits, change of whatever nature? [64] A. Yes, that is what I have publicly advocated, that the entire case processing system should be pitched at that level because that's where the clients can understand what's going on.

XQ. Have you given any advice to the IRS in terms of the comprehensibility of their tax forms? A. As a matter of fact, I've worked very closely with the reading expert hired by the IRS. You may have noticed that this year's tax forms are much better than last year's, and last year's were much better than the year before. And that expert and I collaborated, he was kind enough to read the article in Exhibit 3 before it was published, and we have actually collaborated on a number of the instances where I've given advice to state and local departments.

XQ. And your advice would be as well, that the tax forms should be at a sixth grade level? A. I believe that the objective toward which he and the IRS are working.

XQ. Dr. Bendick, you are not being paid for your testimony in this case, is that correct? A. That's correct.

XQ. You are providing your testimony because this is an important case in terms of administering welfare programs? [65] A. That is correct.

* * *

Re-examination by Mr. Hitov

* * *

[66] Q. Dr. Bendick, did your earlier opinion have anything to do with the reason why a computer system couldn't do a given operation in terms of leading to the conclusion that is was inadvisable to adopt it if it couldn't, or was it based simply upon the fact that it couldn't accomplish that goal, regardless of the underlying reason? A. My earlier opinion was based on looking at the question of notice as part of a total case processing system, looking at all the considerations that go into that total case processing system. It of course did not take account of factors external to the Department of Public Welfare about which I have no knowledge. But from the point of view of efficient and effective administrative practices within a public welfare department, I stand by my answer that any [67] system—if it is true, if it were true that this is the only sort of notice that system could generate, then I would say some serious administrative error has been made in adopting that system.

* * *

EXHIBIT NO. 4

YEARS OF SCHOOL COMPLETED BY HEAD OF HOUSEHOLD	A*		B**		C*		D**		E*		F**	
	NO. OF MASSACHUSETTS FOOD STAMP HOUSEHOLDS 1976		% OF MASSACHUSETTS FOOD STAMP HOUSEHOLDS 1976		FOOD STAMP HOUSEHOLDS 1976		FOOD STAMP HOUSEHOLDS 1976		CUMULATIVE % OF MASS. FOOD STAMP HOUSEHOLDS 1976		FOOD STAMP HOUSEHOLDS 1976	
	TOTAL	w/EARNINGS	TOTAL	w/EARNINGS	TOTAL	w/EARNINGS	TOTAL	w/EARNINGS	TOTAL	w/EARNINGS	TOTAL	w/EARNINGS
1 Less Than Eight	19,175	5,767	11.2	5.7	11.2	5.7	11.2	5.7	11.2	5.7	11.2	5.7
2 Eight	17,228	9,070	10.1	9.1	10.1	9.1	21.3	14.8	21.3	14.8	21.3	14.8
3 Nine Through Eleven	49,221	30,926	28.9	31.0	28.9	31.0	50.2	45.8	50.2	45.8	50.2	45.8
4 High School Graduate	53,392	36,440	31.5	36.4	31.5	36.4	81.7	82.2	81.7	82.2	81.7	82.2
5 College: 1 to 3 Years	15,084	11,203	8.8	11.3	8.8	11.3	90.5	93.5	90.5	93.5	90.5	93.5
6 College Graduate	15,984	6,433	9.5	6.5	9.5	6.5	100.0	100.0	100.0	100.0	100.0	100.0
7 TOTALS	170,084	99,839	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

* Based on 315 households in the Survey of Income and Education — 1976

** Based on 186 households in the Survey of Income and Education — 1976

EXCERPTS FROM TRIAL TRANSCRIPT
OCTOBER 12, 1982

[17]

STEPHANIE ZADES . . .

Direct Examination

Q: Would you please state your name and address?

A: Stephanie Zades. I live at 62 Road in Indian Orchard, Mass.

. . .

Q: Do you work? A: Yes, I do.

Q: Full time? A: Yes.

Q: Do you have a family? A: Yes. I have one daughter.

Q: Where are you employed? [18] A: I am employed by Child World.

Q: Were you working in December of 1981? A: Yes, I was.

Q: Where was that? A: At Child World.

Q: Was that full-time? A: No. I was working approximately 18 hours a week.

Q: Do you receive any form of public assistance at the present time? A: No, I do not.

Q: Were you receiving any form of public assistance in December of 1981? A: Yes, I was. I was receiving Food Stamps and partial AFDC.

Q: At this time, I would like to draw your attention to early December, 1981. What, if anything, did you receive from the Welfare Department?

. . .

A: I received a blue card.

Q: At this point I would like to show you something that is [19] marked Plaintiffs Exhibit 1. Do you recognize this?

A: I received one of those.

Q: What was it? A: It was telling me that my Food

Stamps were either going to be cut or terminated. It didn't tell me when. It told me three different times that I could appeal. It told me if I did not do it before the first — well, before 90 days were up, that I couldn't get a hearing, but then at the end it told me that I could appeal at anytime.

Q: How did that make you feel? A: But I didn't know what I was appealing. I didn't know if I was appealing a termination or a cut.

Q: At this time I would like to direct your attention to later in December, 1981. What, if anything, did you receive from the Department of Public Welfare? A: I received the orange and yellow card.

MR. HITOV: Your Honor, I believe that the Court has the only copy of the orange and yellow card.

Q: Ms. Zades, at this point I would like to show you two cards. Do you recognize these? A: Yes. Those are the same. I received those.

Q: Are these the cards you were just referring to? A: Yes.

Q: Between the time that you received this blue card that I [20] showed you earlier and the time that you received this card, how many, if any, other Notices did you receive from the Welfare Department? A: Two Notices.

Q: Between the time you got the first card and the time that you got this card? A: Right.

Q: What did you do when you received these cards? A: I turned in or I called my Social Worker and she couldn't tell me anything. She said we knew about these things.

MS. JANOS: Objection, your Honor.

THE COURT: You can't say what she said. As a result of what she said where did that leave you?

THE WITNESS: Absolutely nowhere because the lady could not give me an answer. So I called my attorney and I sent in an appeal. I didn't know where I was going.

. . .

[21] Q: Did you attempt to read the Notice? A: Oh, yes.

Q: Did you understand them? A: I understood the words as to what they were telling me.

THE COURT: What is your educational background? Did you graduate from high school?

THE WITNESS: Yes, I did.

THE COURT: Did you go on from there?

THE WITNESS: No, I didn't.

THE COURT: And you have been working since then in the outside world?

THE WITNESS: Yes, on and off.

THE COURT: What type of occupations have you held?

THE WITNESS: Mostly retail.

THE COURT: Where you have to talk to the public?

THE WITNESS: Right.

Q: When you called your Social Worker did she tell you anything about what was going on at that point?

MS. JANOS: Objection, your Honor.

MR. HITOV: Your Honor, we believe that this is entirely relevant testimony and necessary testimony to establish that the Notices were not effective, and [22] that there was an invitation to call your case worker and that this was a hollow gesture.

THE COURT: Do you intend to call any representative from the Department of Public Welfare, any case worker in the area?

MR. HITOV: No, we do not, your Honor. What the case worker told her client is an admission against interest and is admissible.

THE COURT: Well, beyond the individual case worker, did you go to a supervisor?

THE WITNESS: No, I did not.

THE COURT: You just limited yourself to that one Social Worker that you had dealt with in the past?

THE WITNESS: Yes.

THE COURT: All right. Well, this is a jury-waived trial. I have to know who is telling what to me and what I can regard as the truth or otherwise.

What kind of question did you put to the supervisor?

THE WITNESS: I asked her if I was going to be cut.

THE COURT: Was this face-to-face?

THE WITNESS: No, it was over the telephone.

THE COURT: You were not able to show that person the type of card that you had before you?

THE WITNESS: No, because of the hours that I [23] worked I was unable to be able to go down there without losing a day's pay.

THE COURT: How did you describe the card to the individual that you were speaking to?

THE WITNESS: I told her that they were print-out cards that they had mailed, that they were like the blue card that I had received the first of the month, and that she knew about.

THE COURT: Did you read the case worker the information that was on that particular card?

THE WITNESS: No, I did not.

THE COURT: What kind of questions did you ask her?

THE WITNESS: I asked her if I were going to be cut or terminated and she said she didn't even know anything about the card, that Boston handled everything, that the recipients here knew more about what was going on with the cuts than they did in their own office, that she really couldn't give me any answers — that what ever cut — that they did — wouldn't matter. It wouldn't amount to much.

THE COURT: What did you do after that?

THE WITNESS: I called my attorney.

THE COURT: And your attorney filed an appeal?

THE WITNESS: Yes.

[24] THE COURT: Was he able to determine from the card, the print-out information, to whom the appeal would be directed? He was able to determine that all right?

THE WITNESS: I really can't answer.

THE COURT: My point is: were your rights protected by a timely appeal by your attorney?

THE WITNESS: Yes, oh, yes.

Q: What happened with your appeal? A: I was never notified of an appeal date. I received a phone call from my Social Worker one day asking me what happened to me. I asked her what she meant and she said, "You were supposed to be here this morning for an appeal," and I said, "I was never notified".

. . .

Q: What happened then? A: I called you.

Q: What happened following that? A: You called and set up another appointment for another appeal hearing.

Q: Was that hearing ever held? A: Yes, it was.

Q: Was that hearing on some other issue? A: It was held along with the issue that they were [25] going to terminate me from AFDC.

Q: What was the result of that hearing? A: I won the hearing. They had to go through and redetermine my whole case.

Q: Why was that? A: Because there had been so many notices sent out over such a short period of time nobody knew what I was supposed to receive.

Q: Who was at the hearing for the Department? A: My Social Worker was present, and I believe the woman's name was Diane Miller.

Q: Was your Social Worker able to explain what had happened? A: No.

MR. HITOV: At this time, your Honor, I would like to have marked for identification as Plaintiffs Exhibit 13 — if the Court would indulge us, I have the original here and I also made a copy so the client's file would remain intact.

. . .

(Appeal Decision of Division of Hearings Massachusetts Department of Public Welfare marked Plaintiffs 13)

Q: Do you recognize this? A: Yes. This is the letter that I received saying my case had been approved.

* * *

[26] THE WITNESS: I received this in the mail telling me that it had been approved and that they were going to redetermine my case.

MR. HITOV: Your Honor, I would like to have this submitted into evidence.

THE COURT: It may be admitted.

(Plaintiffs 13 for Identification received in evidence.)

* * *

Cross Examination by Mr. Aloisi

XQ: Good morning. A: Good morning.

XQ: Ms. Zades, I am Mr. Aloisi, an Assistant Attorney General.

Ms. Zades, could you give me an indication of jobs you have held for Child World? Are they retail jobs? A: Yes, retail sales.

XQ: How long have you been working in the retail sales business? A: Even back when I was in high school.

XQ: I won't ask you for your age, but it was for awhile? A: Awhile, yes.

XQ: What precisely do you do in your current job?

[27] A: I work for Child World.

XQ: What tasks do you perform? A: I am Manager of the Electronics Department for Child World.

XQ: What does that mean? A: I sell home computers.

XQ: Oh. What skills do you find are necessary to perform your job right now? A: What what?

XQ: What skills? A: I have to know how to read and write and talk to the public.

XQ: Do you deal occasionally or routinely with forms in your job? A: Constantly.

XQ: What kinds of forms? A: Refunds, credits, I handle a good deal of paperwork.

XQ: Notices? Do you ever publish notices yourself?
A: No, I don't.

XQ: Do you read them? A: Surely.

THE COURT: What about instructions or booklets on how to operate home computers?

THE WITNESS: Yes.

THE COURT: Do you read the booklets and then [28] describe how, in fact, the computers operate and function?

THE WITNESS: I go play with it and try it out.

XQ: So you operate these computers? A: Yes, I get to play with them.

XQ: Do you recall the first time that you participated in a Food Stamp program? A: The very first time? No.

XQ: Can you approximate how many years it has been since you have participated in a program? A: I couldn't even give you a guess, not even a wild guess.

XQ: Longer than a year? A: Oh, yes.

XQ: Have you in the past been on other Public Assistance Programs? A: Just AFDC.

XQ: How long were you on that, approximately? A: Full or partial?

XQ: Either. A: On and off for about 15 or 16 years.

XQ: Over that course of time were you also during some of that period or all of it — do you think you might also have been on the Food Stamp Program as well? A: Yes.

XQ: During those 15 or 16 years can you approximate how many [29] Notices you received from the Welfare Department? A: There was a time we rarely ever got a Notice from them. If anything, you had a visit from your worker and she explained to you what was going on, and that was it. They didn't mail out all this other stuff that they do today.

XQ: So how many do you think you have received over the course of time since they started revving up their Notice motors, more than 12? A: Probably.

XQ: More than 20? A: It's a possibility. I couldn't give you an answer.

XQ: Have you ever before participated in a lawsuit against the Welfare Department in which you were a named plaintiff?

A: No.

. . .

XQ: Do you have children? A: Yes, I do.

XQ: Do you have occasion to deal with forms in your daily [30] life, tuition forms? A: Yes, I do.

XQ: Loan applications? A: Yes.

XQ: Do you have any college age children? A: No.

XQ: With the forms that you have received as part of your routine life, utility forms, for example, loan applications, tuition loans, have you had occasion to find yourself not understanding those forms? A: I have had one or two.

XQ: What do you do when that happens? A: I go to somebody that can give me the answer.

XQ: And who is that? A: It depends on what it is. If it is something to do with work I go to my manager. It all depends. If I have a problem over an electric bill I call the Electric Company. You go to the person who can give you the best answer to your problem.

XQ: Are there varying reasons for your inability to understand those kinds of things or are they unique to a particular Notice? A: The Notice was just confusing. It kept referring you back to the other card.

XQ: The Notices in this case aside for a second, can you [31] recall for me any Notices in the past that you have received from the Welfare Department that you found difficult to understand, if any? A: No. I don't think I have ever had a problem with a Notice that I had received before.

XQ: So prior to the Notices which are in issue in this case

you never had any difficulty understanding those from the Welfare Department? A: No.

XQ: Let me show you Plaintiffs' Exhibit 1 and ask you to look at that. On that Notice are there any words that you find you are unable to understand? A: The words are fine.

XQ: You understand each of them? A: The words are great. It's the double-talk that will get you.

XQ: What do you mean by that? A: It tells you you can appeal within, you know, ten days. Then it tells you that you can appeal up to 90 days. But after that you won't get a hearing. I mean it doesn't make sense because at the bottom it says that you can appeal at anytime. Well, if you can't get a hearing after 90 days what good is it going to do you to send in an appeal?

XQ: But you understand precisely what it says? [32] A: I understood that they were either going to cut me or terminate me. I wanted to know what they were going to do.

XQ: I am sure you did. A: I mean, if somebody told you they were either not going to give you a raise or they were going to give you a raise you would say, "Well, which one?"

XQ: When you got this notice what is the first thing that you did? A: I read it.

XQ: How many times? A: How many times?

XQ: Yes. A: Not too many with my eyesight. The print is small.

XQ: Less than three? A: No. I have to say that I read this more than three times.

XQ: Well, the first time? A: The first time I saw it I think I read it through once and then I stuck it on the counter in the kitchen and I may have passed it again and picked it up.

XQ: How many times did you read it before you called your case worker? A: On this one I didn't call my case worker. I called on the second Notice.

[33] XQ: Let me ask you to take a look at this Notice, these two cards, and I will ask you the same question which is: if there are any words on either of those cards that you do not understand? A: With the Spanish side up? You had better believe that there is.

XQ: Are there any English language words that you do not understand? A: No. I understand the words.

XQ: Okay. And how many times did you read that when you got it? A: This one I never finished.

XQ: You never finished it? A: I did not finish it.

XQ: You never read it through? A: I got tired of being bounced back to Page 1.

XQ: So you never read the whole thing once through? A: Fully? No.

XQ: Have you ever brought an administrative appeal from the decision of the Department of Public Welfare that related to your benefits? A: I have gone on appeal.

XQ: How many times have you brought appeals? A: Twice.

XQ: In the whole 15 year period? [34] A: Yes.

XQ: And did you appeal from this Notice? A: This one, right.

XQ: Did you have a hearing —

MR. HITOV: Your Honor, I believe we have gone over this testimony. This was mentioned earlier.

THE WITNESS: That was the hearing that I was never notified of.

THE COURT: Did you ever get a decision?

THE WITNESS: Yes.

THE COURT: Did you get reimbursed?

THE WITNESS: I did. There had been a mistake and they were ready to terminate my AFDC and then they realized they had made a mistake.

XQ: Do you recall the name of your case worker? A: Lucille Compton.

. . .

[35] *Redirect Examination by Mr. Hitov*

Q: Ms. Zades, Mr. Aloisi asked you about other Notices that you had received in the past. How did this Notice, the Notice on the orange and yellow card, compare with in terms of difficulty with any Notice that you had received? A: The print was even smaller.

Q: You will have to speak louder. A: The print was even smaller.

Q: How about the difficulty of understanding? A: Well, it bounced you back and forth so much you didn't know what you were reading.

Q: You also in response to one of Mr. Aloisi's questions stated that you only got halfway through or part way through the second Notice, the orange and yellow card. What were the reasons that you didn't finish the Notice? A: Number one, the print was much too small for me to be able to read.

Q: Were there any other reasons? A: Yes. It just didn't seem to make enough sense. It was confusing.

* * *

GILL PARKER (Sworn)

Direct Examination by Mr. Hitov

Q: Would you state your name and address for the record, please? A: My name is Gill Parker and I live in Springfield at 329 Carew Street.

Q: Does anybody in your family work? A: Yes, my wife does.

Q: Where? A: At the UNICEF Corporation.

Q: What is the last grade you completed in school? A: The 11th grade.

Q: Do you receive any benefits of any kind from the Department of Public Welfare? A: Yes, I do, Food Stamps.

Q: In the month of December, 1981, did you receive anything from the Department? [37] A: Yes, I did.

Q: What is the first thing that you received? A: A form

designating that my Food Stamps were being terminated or reduced.

Q: At this time I would like to show you something that has been marked Plaintiffs Exhibit 1. Do you recognize that?

A: Yes, I do.

Q: Is that the Notice that you just referred to? A: Yes, it is.

Q: When you got that Notice, Mr. Parker, what did you do with it? A: I read it thoroughly.

Q: How many times? A: Several, three or four.

Q: Did you understand what it was telling you? A: No, I did not.

Q: What did you do then? A: I called Mr. Robert Mack at the Welfare Department.

Q: Do you happen to know what Mr. Mack's position is? A: Supervisor-Director.

Q: Was he able to help you? A: No, he wasn't. He told me he was not aware of the cards and he couldn't tell me whether or not I was being terminated or reduced because he wasn't aware of — they were coming from Boston.

[38] Q: What did you do after receiving the card? A: I contacted my counsel.

Q: What did you do then? A: Appealed.

Q: Did you receive anything else from the Welfare Department in December? A: Yes.

Q: What was that? A: Another card and it had much smaller print on it.

Q: At this time I would like to show you two cards that have been marked Plaintiffs Exhibit 2. Do you recognize these? A: Yes, I do.

Q: Are those the cards that you just referred to? A: Yes, they are.

Q: Did you read these cards? A: Yes, I did.

Q: Did you skim them over or did you try and work them out or what? A: I read the card thoroughly.

Q: And did you understand them? A: No, I did not.

Q: Did you seek any help? A: Yes. I called a friend of mine, and we read them thoroughly. My wife read them. After one or two readings [39] I finally needed a magnifying glass because the print was too small.

Q: You mean literally? A: Literally. When I wanted to make an issue of it my wife said, "Just throw the cards out. Don't bother with it." And when I asked her, "Why?", she said, "Well, they are going to do what they want to do anyway and there is nothing we can do about it." I disagreed with her. I have a lot of faith in the system.

Q: After you had gone over the yellow card with your friend and with your wife, did you understand it then? A: No, neither one of us did.

Q: Mr. Parker, before you got either of the December Notices, do you remember what your benefit level was with Food Stamps? A: \$72.00.

Q: During this period of time, back in December of 1981, at the end of what month or what time did your certification period with Food Stamps end, do you remember? A: No.

Q: Do you remember whether or not you were recertified for Food Stamps around the time that you got these Notices? A: Yes.

Q: Between the time that you received the first Notice and the time that you were certified were there any changes in your circumstances? [40] A: No.

Q: When you went for recertification did you report any information you had not reported before? A: No.

Q: What happened following your recertification? A: My Food Stamps went from \$72.00 to \$106.00, and when I asked them why that happened, they said, "Don't worry about it. It's okay," and it bothered me, so I said, "Gee, I would like to know. I was only getting \$72.00 and now I am getting \$106.00," and they just refused to give me an answer.

MR. HITOV: I have no further questions.

THE COURT: What happened to your benefits once the orange and yellow card came out? Were they eventually reduced?

THE WITNESS: No, sir.

THE COURT: You continued to get the \$106.00?

THE WITNESS: No. From the time I was receiving \$72.00. And then I got \$106.00, and I don't know why, and I still don't know why.

THE COURT: My point is: what happened to the \$106.00 thereafter? Did you continue to receive it each month?

THE WITNESS: Yes, until just recently.

THE COURT: All right.

[41] *Cross Examination by Mr. Aloisi*

XQ: Good morning. A: Good morning.

XQ: Mr. Parker, would you tell us if you are personally employed? A: No, I am not.

XQ: Have you been employed in the past? A: Yes.

XQ: Would you tell us in what jobs, what kind of jobs? A: Occasionally I instruct in the Martial Arts and I am occasionally a game technician.

XQ: What does that mean? A: A game technician means that I am part of a very complex game called Advanced Dungeons and Dragons. If you are unfamiliar with it, it is a fancy role playing game, and I am used as a reference at the Springfield Library for this game.

XQ: Would you give us a very brief synopsis of what that means, what that game means? A: It is a very complex game that is involved with a great deal of precision and perfection. It is a game that entails a great deal of reading and comprehending, to be brief.

XQ: What kind of skills do you find are necessary to perform the functions of a game technician? [42] A: It is

based on a referee status who controls the flow of the game. As the participants in the game have to make decisions I must referee over it. In order to do this my skills are involved in reading and comprehending.

XQ: Reading what? A: Reading manuals and modules and technical advice that flows through the books. There are five books involved in this game. The modules come on a regular month to month basis.

XQ: Would you describe them as complex? A: Excuse me?

XQ: Would you describe the manuals as complex? A: Yes, I would.

XQ: And you have no problem understanding them? A: No, I do not.

XQ: How long have you been receiving Food Stamps? How long have you been in the Food Stamp Program? A: Approximately a little over a year, maybe more.

XQ: Are you currently receiving any other public assistance? A: No, sir, I do not.

XQ: Have you ever in the past? A: Yes.

XQ: What was that? A: For the kids, \$50.00 every other week for the kids.

[43] XQ: Do you know what that program was? A: I don't know what it is called. Aid To Dependent Children, I believe.

XQ: The AFDC Program. How long were you involved in that public assistance program? A: I couldn't really say. My wife was receiving benefits when I met her, and shortly after that they were terminated.

XQ: During the time that you were on public assistance programs, how many occasions do you recall receiving Notices from the Department of Public Welfare? A: I couldn't give you an exact number but they were few.

XQ: Prior to receiving the two Notices that are at issue here

today, prior to that time can you recall receiving a Notice from the Welfare Department that you did not understand?

A: No, sir.

XQ: Have you ever participated in a lawsuit as a named plaintiff that was brought against the Department of Public Welfare? A: Well, if you mean by a lawsuit did we have a hearing? Yes.

XQ: I don't mean an administrative hearing. I mean a lawsuit in court. [44] A: No.

XQ: What was it about these particular Notices that prompted you to bring a lawsuit against the Department of Public Welfare? A: Well, after I read the card and found out — you know, when you are just barely getting by and you read a card and it says that your Food Stamps that you depend on a great deal are either going to be taken away from you or cut down drastically — you know, right away it rings a bell quick. So that's why I made an issue of it and contacted my counsel.

XQ: You say that you depend upon Food Stamps a great deal? A: Sure. Anybody that receives Food Stamps probably knows what I am speaking about.

XQ: Does that affect in any way the manner in which you deal with a Food Stamp Notice when you receive it? A: No. When my Notices come in the mail I look at them all with the same kind of intent. You know, when I get a Notice I figure it is important enough for me to open it up and take a good look at it.

XQ: In the general course of your life do you have occasion to receive Notices or forms, for example, from utilities or school tuition forms or that type of thing? A: Yes. My daughter goes to Cathedral and I fill out forms for my credit cards and I have to fill out forms [45] for my utilities.

XQ: Do you recall an occasion in the past when you have ever had a problem understanding any of those particular forms or applications? A: No, sir.

MR. ALOISI: I would like to have this marked for identification.

(Notice of Eligibility for Recertification marked Defendants Exhibit A.)

XQ. Would you please look at this? I ask you if you know what that is? A. Yes, I know what it is.

XQ. What is it? A. It is a Notice of Eligibility for Recertification.

XQ. Do you recall receiving that? A. Yes.

XQ. When did you receive it? A. The date says 1/27.

* * *

[46] XQ. When you received it what did you do with it? A. This particular form?

XQ. Yes. A. I'm sorry. I don't remember.

XQ. Well, did you read it? A. Well, if I didn't read it my wife read it. I don't remember right offhand.

XQ. You don't recall reading it? A. Can I take a minute to look at it?

XQ. Surely. A. I couldn't say. I couldn't say that I remember reading it. That doesn't mean that I didn't though.

XQ. All right. Do you recall in a deposition that I took of you that I showed you this Notice? Maybe I should show this to you.

MR. ALOISI: The original is on file, the deposition.

MR. HITOV: Do you remember the exhibit number?

MR. ALOISI: 6.

[47] XQ. This is a copy of a transcript of your deposition. I asked you about this particular Notice.

My question was: "Did you read it?"

Can you read your answer? A. Yes, sir.

XQ. Does that refresh your recollection as to whether you read this or not? A. No, sir. I'm sorry.

XQ. You might have been mistaken? A. No. It is just that it has been awhile since the deposition. My mind is not a tape recording. I can't remember every single thing in my life.

XQ. Let me move on then.

MR. HITOV: Excuse me, your Honor. I got confused by the question. Is it clear on the record that the Notice that was shown to Mr. Parker was not the Notice we have just been talking about?

THE COURT: Was the Notice that you showed him before the same Notice that you showed him during the deposition?

MR. ALOISI: Yes. He says he can't recall.

MR. HITOV: Your Honor, I am not totally certain that those are separate Notices. The Notice that I have marked as Exhibit 6 at the deposition has a different date on it than the Notice Mr. Aloisi has been [48] discussing.

MR. ALOISI: You are absolutely right.

MR. HITOV: I would like that testimony either stricken or the record corrected to read that they were different Notices.

MR. ALOISI: It is plain that it is not the same Notice and it is also plain that he doesn't recall.

THE COURT: All right.

XQ. I would like to ask you if you got the Notice in this case. I ask you to look at this card. Do you recognize that card? A. Can I take a minute to look at it?

XQ. Sure. A. I recognize the card.

XQ. What is it? A. It is a card from the Department of Public Welfare. What do you want me to answer exactly? It is a card from the Department of Public Welfare.

XQ. That's fine. Did you receive that Notice? A. Yes, I did.

XQ. What did you do with it when you received it? A. I read it thoroughly. And I had my wife read it.

XQ. Are there any words in that card that you do not understand? A. Not to my immediate attention, no.

[49] XQ. I ask you the same question with respect to these cards. You may look them over. Do you know what they are? A. Notices from the Department of Public Welfare.

XQ. And did you receive those? A. Yes, I did.

XQ. What did you do when you received them? A. I read them thoroughly several times, and the yellow one with a magnifying glass. After the first reading my eyes became blurred, and it bothered me that I didn't understand some of it because I consider myself a pretty good reader. I read a lot and I am a game technician and it is unusual for me to read something and not be able to understand what it is.

XQ. Do you understand the meaning of all the words on both cards? A. I think in order for me to answer that question with all honesty I would have to read the entire cards. Basically, offhand, everything is okay.

XQ. Do you recall when you received it, when you read it, do you recall whether you had a problem understanding particular words on the card? A. No, sir. I do remember at the deposition that there was one word that I found difficult but when you wrote it out larger the meaning became clearer to me.

[50] XQ. That's right. You have a good memory. Let me ask you this question that is not related to that card which is whether you have ever brought an administrative appeal from a decision of the Department of Welfare relating to your benefits? A. Yes.

XQ. Over the course of time that you and your family have been on public assistance how many appeals can you estimate that you have brought? A. To my recollection I have only had one appeal.

XQ. Just one appeal. I see. Did you take an appeal from this Notice? A. I don't remember.

MR. ALOISI: I would like to have this marked for identification.

(Affidavit of Gill Parker marked Defendants B.)

A. Sometimes my memory is clear and sometimes it is not. I'm sorry.

XQ. It happens to all of us. I would like you to look at this

and after looking it over can you identify it for us? A. This is an affidavit.

XQ. Whose affidavit is it? A. It says Affidavit of Gill Parker. I assume it is [51] mine.

XQ. How many pages does the document have? A. Three or three and a half pages.

XQ. On the first page, is that your signature? A. Yes, sir.

XQ. Do you recall signing that document? A. Yes, sir.

XQ. When you signed the document did you read it? A. I hope so.

XQ. When you read it did you understand it? A. It is very complicated. I am sure I did.

XQ. So you did understand it when you read it? A. Yes.

XQ. Fully? A. I understood the last page, the last line on the last page very well. I remember that.

. . .

[52]

CECILIA JOHNSON (Sworn)

Direct Examination by Mr. Rae

Q. What is your name, please? A. Cecilia Johnson.

Q. Where do you live? A. 38 Bay Street, Springfield.

Q. Do you work? A. Yes, I do, for the Department of Mental Health.

Q. What is your educational background? A. I have a Bachelor's Degree from Springfield College. I have a Bachelor's Degree from American International College. I have an Associate's Degree from Springfield Technical Community College. I have a Certificate from Yale University, Department of Psychiatry, certifying me as a community-based production specialist.

Q. Prior to your present job with the Department of Mental Health where else did you work? [53] A. The Division of Employment Security.

Q. What were your responsibilities with the Division of

Employment Security? A. I was a caseload manager and an employment counselor. As a caseload manager I was responsible for reading Federal regulations from the Department of Labor, interpreting them for staff. I supervised a staff of ten. Also, giving out regulations to the clients that were in the program. As employment counselor I was responsible for on-the-job contracts with various private and public employers.

Q. Have you ever done any community work in the Springfield area? A. Yes, I have.

Q. Can you tell us exactly what that work has been? A. I worked with the Community Health Education Council for Children and Adolescents out of the Mayor's Office. I also directed a program for adolescents.

THE COURT: What is your present title with the Department?

THE WITNESS: MHA 1, Mental Health Assistant 1.

THE COURT: What are your duties?

THE WITNESS: I am assigned to the Springfield Community Mental Health.

[54] Q. Do you have a family? A. I have eight children and six grandchildren.

Q. Who is responsible for the care and supervision of your grandchildren? A. I am.

Q. Does your family presently receive Food Stamps? A. No.

Q. Did your family receive Food Stamps in November and December of 1981? A. Yes.

Q. What, if anything, did you receive from the Welfare Department in early December, 1981? A. On December the 2nd I received a computerized card.

Q. At this time I would like to show you Plaintiffs' Exhibit 1 and ask you if you can identify it? A. Yes. This is the card that I received on December the 2nd.

Q. What did you do when you received that card? A. I read the card with some difficulty. The card said that Food

Stamps were being reduced or terminated. It didn't tell me what was going to happen — one of the two. There was no clear distinction.

Q. After you read the card, what did you do then? A. I called my Social Worker, Barbara Wiley, and she [55] couldn't tell me much on the telephone. I then went to see her.

Ms. JANOS: Objection, your Honor.

THE COURT: You may go on.

A. I then went to see her and she couldn't understand it. She told me it had come from Boston and she didn't know anything about it.

Q. Did you ask her how much your benefits were going to be reduced or whether they were going to be terminated?

A. Yes. She didn't know. She didn't understand the card.

THE COURT: Just as a matter of curiosity, were these benefits for your children or your grandchildren?

THE WITNESS: My two grandchildren.

Q. What did you do then? A. I appealed it.

Q. What, if anything, else did you receive from the Welfare Department in early December? A. Approximately four or five days later I got another notice from the Department of Public Welfare telling me that my Food Stamps were going to be reduced because my income had changed when, in fact, it had not.

Q. Your income had not changed? A. My income had not changed. I am a salaried employee [56] by the State of Massachusetts, the Department of Public Health. My income did not change.

Q. What did you get from the Department of Welfare in December, if anything else? A. Later on, and I don't know how much later on, but a couple of days or a week maybe, I got two cards.

Q. I show you Plaintiffs' Exhibit 2 and ask you if you can identify those? A. These are the cards that I received.

Q. What did you do when you received those two cards?

A. I read them with great difficulty. Page 1 refers you to Page 2 and then it refers you back to Page 1, and then it refers you back to Page 2. I could not understand them. I read them three or four times. My son read them with me. He couldn't understand them either. He said, "Mum, you should do something about this because I don't understand them either."

Q. How old is your son? A. 22.

Q. What kind of educational background does he have?

A. He is a student at Springfield Technical Community College majoring in accounting.

Q. You testified earlier that you appealed the first notice, the blue card. What happened with that appeal? A. I had a hearing.

. . .

[58] Q. Can you describe what happened at your hearing?

A. It is hard to describe what happened at the hearing because the Hearing Officer himself was totally confused about what was going on.

Q. Was there a representative from the Department of Public Welfare at the hearing? A. Barbara Wiley, my Social Worker, was there.

Q. Was she able to explain whether your benefits were being reduced or terminated? A. No, she wasn't.

Q. Did she have with her a copy of the computations or budget sheets pursuant to which your Food Stamp budget was computed? A. She had a lot of — she had some microfiche. It was totally confusing at the hearing because she kept getting up and leaving the room to get different kinds of microfiche.

Then we had to go out to the machine and look at the microfiche. She still couldn't understand what happened. She couldn't explain what happened. The Hearing Officer said — he was totally confused. He couldn't understand what had happened.

Ms. JANOS: Your Honor, I move to strike. It is not responsive.

THE COURT: That will go out. The hearing was [59] a result of an appeal based on the blue card notice that you received and not the orange and black notice?

THE WITNESS: That's correct.

MR. RAE: Your Honor, for a point of clarification, an appeal from the blue card acted as an appeal from the orange and yellow card as well.

THE COURT: All right.

Q. Did you receive a decision from the Department of Welfare after your hearing? A. Yes, I did.

MR. RAE: Your Honor, I would like to have this marked as the plaintiffs' next exhibit.

THE COURT: Very well.

(Decision: Department of Public Welfare marked Plaintiffs' Exhibit 14 and received.)

Q. I would like to show you this and ask you if you can identify it? A. Yes. This is the decision that I received from the Hearing Officer from the appeal.

MR. RAE: At this time, I would like to move this into evidence, your Honor.

THE COURT: It may be admitted.

. . .

Cross Examination by Mr. Aloisi

. . .

[61] XQ. Ms. Johnson, let me ask you with respect to your employment this question: would you describe briefly for us the particular tasks that you find necessary to perform on a day-to-day basis and, what kind of skills do you find it necessary to perform the functions? A. The comprehension of daily living.

XQ. Do you have occasion to do much reading in that job? A. Yes, I do.

XQ. What reading and what kinds of materials? A. Articles having to do with drug and alcohol abuse and prevention, articles having to do with various clarification of judg-

ment skills, things that are needed to function as a human being.

XQ. Thank you. Can you approximate for us how many years [62] you have participated in the Food Stamp program? A. I couldn't give you an accurate answer on how many years.

XQ. An approximation would be fine. A. Well, the Food Stamp Program has only been in existence, I believe, six years or so.

XQ. And you have been participating for six years? A. No, I haven't been participating for six years.

XQ. Approximately how long have you been participating? A. I have had my grandchildren — it will be two years in December.

XQ. Have you ever been on any other forms of public assistance? A. Yes, I have.

XQ. What were they? A. AFDC.

XQ. How long have you participated in that program? A. Off and on for quite a number of years.

XQ. Could you approximate what that means in terms of — you said "quite a number" — A. In terms of numbers?

XQ. Yes. A. Let's see. Off and on for the last fifteen years or so.

XQ. And over that course of time, and prior to the time you [63] received these Notices that are at issue in this case, did you ever have occasion where you had difficulty understanding a Notice that was sent to you by the Welfare Department? A. Some times.

XQ. Do you recall what that difficulty may have been? A. I couldn't.

XQ. Have you ever participated in a lawsuit as a named plaintiff against the Welfare Department before this suit? A. No.

XQ. What was it about these Notices that prompted you to sue the Department?

MR. HITOV: Objection, your Honor. He is asking the client why she pursued relief. I object. He is asking her why she decided to sue.

THE COURT: Are you a named plaintiff in this case?

THE WITNESS: I think so.

THE COURT: Is she a named plaintiff?

MR. HITOV: Yes, she is, your Honor.

THE COURT: She may answer the question. You must know why you sued. Why are you a named plaintiff?

THE WITNESS: I didn't understand what was going on with the Notices that I was getting.

[64] THE COURT: You didn't understand the Notices? Is that what you are saying?

THE WITNESS: That is correct.

XQ. During the months of October, November and December of last year, were you participating in the Food Stamp Program? A. Yes.

XQ. Were you participating in the AFDC Program? A. My grandchildren were.

XQ. During those three months, October, November and December of 1981, do you recall how many Notices you received from the Welfare Department? A. I couldn't give you an estimate.

XQ. Only these two? A. In that three month period?

XQ. Yes. A. I don't think so but I am not positive. I really don't know.

XQ. Do you recall receiving a Notice with respect to your AFDC benefits? A. Yes.

XQ. Do you recall receiving any other Notices aside from the AFDC Notice and these Food Stamp Notices? A. I got some Notices from the Welfare Department. It is mind boggling. If you are talking about from October, [65] November and December — ?

XQ. Yes. A. Yes. I don't know how many Notices I got.

THE COURT: You what?

THE WITNESS: I don't remember how many Notices I got, your Honor.

THE COURT: All right.

XQ. With respect to the AFDC Notice that you say you received, do you recall having a problem understanding that Notice? A. Yes.

XQ. Let me ask you this: you said before that you in the past had been doing as part of your prior employment some reading of the Federal regulations for the Department of Labor? A. I was caseload manager for the Division of Employment Security, and as such it was under the regulations of the Department of Labor and my job was to read and interpret the regulations.

XQ. Were they a vast array of regulations? A. Yes. I received training from the Division of Employment Security with regard to those regulations.

XQ. You don't recall what they were? A. I couldn't say.

XQ. Did you write memos to other people? [66] A. To my staff, yes.

XQ. Interpreting them? A. Yes. As I said, the Division of Employment Security trained me in reading and interpreting the regulations. I received extensive training in that.

XQ. Did you use the Federal Register at all in that job? A. No.

XQ. What did you use? A. They were regulations that were sent from the Department of Labor to the Division of Employment Security which were then sent to me as they regarded the comprehensive employment training program.

XQ. Were they printed in a booklet? A. No. It was usually a couple of sheets of paper.

MR. ALOISI: I would like to have this marked for identification.

THE COURT: Very well.

(Notice of Eligibility for Recertification marked Defendants Exhibit C.)

XQ. I show you this and ask you to look at it. Can you identify it for us? A. This is a Notice of Eligibility and Recertification.

XQ. Did you receive that? A. Yes, I did.

XQ. What did you do with it when you received it? [67]

A. I was told I would receive this at the hearing by the Hearing Officer.

XQ. When you received it what did you do with it? A. I read it.

XQ. Did you understand it when you read it? A. Yes.

XQ. Fully? A. It's very simple.

XQ. Do you know what recertification means? A. I know what it means but it would be hard for me to explain it to you.

XQ. Do you know what happens to you when you get recertified? A. That whatever is happening is going to continue.

XQ. Pardon me? A. What this meant to me was my Food Stamps would continue at least through the month of April.

XQ. When you go through a recertification process what is that like? Can you describe that briefly? A. Going through a recertification process is an application that a Social Worker fills out. She asks you questions and then she says, "Is what you told me true?", and if you say, "Yes," she says, "You sign this", and that's it.

XQ. Then she puts questions to you? A. They are supposed to.

[68] XQ. In your experience that is what happened? A. Yes.

MR. ALOISI: I would like to move the admission of this.

THE COURT: Is there any objection?

MR. RAE: No objection, your Honor.

THE COURT: It may be received in evidence.

(Defendants Exhibit C for Identification received in evidence.)

MR. ALOISI: I would like to have this marked for identification.

(Notice of Food Stamp termination marked Defendants' Exhibit D.)

XQ. Would you look this over and would you identify it if you can? A. I recognize it.

XQ. What is it? A. It is a Notice of Food Stamp Termination.

XQ. Did you receive it? A. Yes, I did.

XQ. What did you do when you received it? A. I did nothing.

XQ. Did you read it? A. Yes, I did.

XQ. When you read it did you understand it? [69]
A. Yes, I did.

XQ. Fully? A. Yes.

MR. ALOISI: Your Honor, I would like to move this into evidence.

. . .

(Defendants Exhibit D for identification received in evidence.)

XQ. Ms. Johnson, have you ever brought an administrative appeal from a decision of the Department that related to your benefits? A. I'm sorry. Would you repeat that?

XQ. Have you ever brought an administrative appeal from the Department of Welfare, that is, a decision relating to your benefits? A. Yes, I have.

XQ. Do you recall how many times over the course of years you have brought appeals? A. No, I don't.

XQ. Would it be fair to say that it might be more than five times? A. Possibly. I couldn't really say.

. . .

[70] (Affidavit of Cecelia Johnson marked Defendants' Exhibit E for identification.)

XQ. I ask you to look this over and to identify it if you can. A. I recognize it.

XQ. What is that? A. An affidavit.

XQ. Whose affidavit is it? A. Mine.

XQ. How many pages does the affidavit have? A. Three.

XQ. On Page 3 is that your signature? A. Yes, it is.

XQ. Do you recall signing this? A. Yes, I do.

XQ. When you signed it had you read it? A. Yes, I had.

XQ. When you read it did you understand it fully? A. Yes, I did.

MR. ALOISI: Your Honor, I would like to have that moved into evidence at this time.

. . .

[71] *Redirect Examination by Mr. Rae*

Q. Mr. Aloisi asked you about how many Notices you had received in October, November and December, and your testimony was that you did not recall exactly how many you had received. Would it be your testimony that you received numerous or very few Notices during that period?
A. Numerous.

[97] DEPOSITION TESTIMONY OF ALLAN HALEY

"Direct Examination by Mr. Rae

"Q. Can you state your name and address? A. Allan Haley, 30 Woodland Street, Newburyport, Mass.

"Q. Where do you work? A. New York City.

"Q. For whom? A. International Type-Face Corporation, I.T.C.

"Q. Do you commute from Newburyport to New York City? A. I commute from New York twice a week. I work in the city three days. I fly down on Tuesday morning.
[98] Tuesday, Wednesday, Thursday, and Friday; back Thursday afternoon early evening.

"Q. What is your position at I.T.C.? A. Director of typographic marketing. Could I elaborate?

"Q. Explain what that is. A. I.T.C. is a company that is basically a brokerage house for type-face designs. We com-

mission type-face designs and sell those type-faces to a group of subscribers and major manufacturers of phototype setters and type imaging equipment. Then we market those type-faces. Every time they sell one of our type-faces, we receive a royalty. I am Director of Marketing Services basically to help our subscribers market type and also to help them educate their customers and internal staff as to the usage of type and how to sell it to them.

"Q. How long have you worked at I.T.C.? A. Just slightly less than a year.

"Q. Where did you work prior to your job at I.T.C.? A. Prior to working for I.T.C., I worked for CompuGraphic Corporation in Wilmington, Mass.

"Q. What was your position? A. My title was Typographic Consultant which meant I had something to do with everything they have to [99] do with typographics. They are the largest manufacturers of phototype setting equipment. I was responsible for the type-faces that they designed. I was responsible for maintaining the design quality of those type-faces, for putting together marketing programs to sell those type-faces to their customers, and for building educational programs for the internal sales staff for CompuGraphic users.

"Q. How long did you work there? A. Ten years.

"Q. Prior to working with CompuGraphic, where did you work? A. I worked for a company on the West Coast, the Letter Graphics International. At the time I left, I was doing alphabet designs, original type-faces for the typography marketplace. I was hired there as a typesetter and letter artist.

"Q. Do you also have other employment while you were working for Letter Graphics? A. While working at Letter Graphics, I was teaching undergraduate classes in UCLA.

"Q. What was your position? A. I was an assistant professor.

"Q. What is your educational background? A. I hold a BA Degree from — it's now called the [100] University of

California at the time it was a state college. It is now a straight university, and I hold a BA in Graphic Communications and MA from UCLA in Typographic Communication.

"Q. What professional organizations do you belong to?

A. I belong to the National Composition Association. I am on the Board of Directors of that particular association, and I am the chairman of the Typographic Aesthetics Committee. It is the largest association that serves people who are in the business of setting type for profit. I am also on the Board of the Friends of the National Printing Museum. I am a member of the American Institution for Graphic Arts. I am a member of the Type Directors Club and also a member of the Society of Typographic Art.

"Q. You have testified that you work approximately three days a week for I.T.C. What do you do with the remainder of your time? A. The remainder of my time is the two days that I am at home. I actually do some work for I.T.C., do a lot of writing for publications for I.T.C., consulting with various companies. Primarily, writing and consulting.

"Q. Have you written any books? [101] A. Funny you should ask. I wrote a book called Photo Typography.

"Q. What is that book about? A. It is a primer of typographic usage for people just coming into the typographic industry who have equipment that sets type in one way or another or it tells them the knowhow to use the equipment. Does not show how to use the tools of type, but shows how to create effective communications. It is a primer of effective communications.

"Q. Have you written any article for trade journals?

A. I write, I guess, you would say extensively, over a hundred articles anyway for journals such as Type World. I am going to forget some.

"Q. Have you written any for Base Line? A. Base Line Magazine.

"Q. Do you do any teaching in your spare time during the period of time that you are not working for ITC? A. I do lecturing for universities, for trade associations, and for industry. I am currently running a class with Pratt in New York City in the fall.

"Q. What kind of things do you conduct in training sessions? [102] A. They are primarily in typographic usage. Entry level: how to communicate with type; how to use the elements of type to create effective communication.

"Q. Are you employed in a consultant capacity with any other firm? A. I am employed as a type safe design consultant for a firm called TSI. It is a British firm.

"Q. Can you tell us where you will be on September 24th of this year? A. Beaune, France.

"Q. What will you be doing there? A. The company that I work for is a member of an association, Atype. It is an international organization of people involved in the typographic industry. We have a major presentation to give at this convention so I am going there for participation and to give a presentation.

"Q. When will that conference end? A. I am hoping to be back from France September 27th. I will be on the airplane September 27th.

"Q. Where will you be on September 28th, do you know? A. Hopefully, we'll be in Boston. It is up for grabs whether I am in Boston or New York. Hopefully, in Boston on the 28th.

"Q. On the 28th you will be in Boston or Newburyport? [103] A. I will be in Newburyport, if it goes to plan. If I am in New York I won't be in Boston."

MR. HITOV: At this point, your Honor, I would like to have Mr. Haley qualified as an expert.

THE COURT: What is the purpose of the testimony? As an expert he hasn't shown any expertise, obviously, in public benefit programs. Is his expert as to the type of print and whether it can be seen by the naked eye?

MR. HITOV: And how the print will affect comprehension.

THE COURT: Well, from that point of view, I will allow him as an expert in that area but not as to what was said.

* * *

MR. HITOV: "Can you tell us in general terms what typography is?"

A. Typography is the craft of creating communication with letter forms. It grew out of the word type which is actually pieces of metal with letters on the metal type. Working with type to create communication."

* * *

[104] MR. HITOV: I believe the question was:

"Q. Are there certain elements or factors that typography concerns itself with? A. Yes. You are basically working with the letters themselves. You are working with type-faces. There are a number of different styles of type-faces, each one being different than the other. Within a type-face you are working setting type, working with things such as line spacing, the amount of white space inserted between lines of type, the lengths of line type, or lines of type, letter spacing, and word spacing. The production quality of the final images is also important. The end result should be a piece of paper with print which is easy to read."

* * *

[105] "Q. With respect to type sizes, can you tell us why that is significant? A. Type is sized normally in points. A point being equal to one-seventy-second of an inch, or .01383 inches. Generally, there are a number of specific point sizes

that you can deal with starting from six points up to fourteen points for special sizes and then more for larger than that designs. There are larger sizes for special applications or for display purposes. I am [106] assuming we are talking about text sizes. I will limit myself to that. Generally, the smaller the type is, the more difficult it is to read. There are a number of other things that come into play, but generally that's why type size comes into importance. Generally, the ideal size in most textbooks, printed information, is somewhere between 8-or-9-and 11 points.

"Q. Is six point type generally used in the trade? A. Six point type is probably one of the most least used in the trade. It is the smallest commercially available. It is the most difficult to read under normal circumstances and generally the only time six point type is used is for specific applications and then normally the six point type is created to be used at that small size."

* * *

MR. ALOISI: There is an additional point, your [107] Honor, the words "commercially available". We have testimony from this expert earlier that he was doing advertising in the marketplace. As an expert he appears to be an expert in commercial enterprises. There is no background in this record that would indicate he has any familiarity with enterprises such as the one at issue here.

THE COURT: I will allow the word "commercial" to be stricken and the rest may stand.

MR. HITOV: I will continue from Page 13.

"Q. Turning to line lengths, why is line lengths significant? A. The length of line directly affects the readability of the printed page. If the line is too short the sentence structure is often broken. If the line is too long it tends to tire the eye and interferes with referencing the beginning of the line that follows. This is called "doubling": reading the same line twice. If the lines of type are too long the reader will tend to read the same line over and over again.

"Q. Are there generally accepted standards in the field for

line lengths? A. There are a number of guidelines. They all come down to basically that there should be somewhere between seven and eleven words per line. Type-faces [108] which are sans serif in design, those without the little feet at the bottom, generally require shorter line lengths. They are more difficult to read than type-faces which have serifs. Sans serif type-faces should have between seven to nine words per line. Serif type styles should have between nine to eleven words per line.

"Q. Do line lengths vary with respect to the size of the type used? A. If you are working with a very small type-face, six point type, and you have nine words on the line, that line will obviously be shorter than a similar line of nine words set in a type-face which is twice as large. A line length would also be twice as long."

MR. ALOISI: Your Honor, without standing up all the time to object, I would like to say that this entire line of questioning is based upon the expert's view of typography as it relates to type face, and we claim that is not the procedural process that was utilized in this case.

THE COURT: Are you going to tie that in with his knowledge in that area?

MR. HITOV: Absolutely, your Honor. He addresses that very issue.

THE COURT: I will allow him to go forward.

[109] MR. ALOISI: Our position is the way that is tied in it shows what could have been done and I am not sure what could have been done is at issue here.

THE COURT: I will allow you to go forward.

MR. HITOV: "Q. Turning to line spacing, why is the space between the lines significant? A. Space between the lines was at one point referred to as leading. Leading came about from the name where you actually inserted a piece of lead between the lines of type to separate the two pieces or two metal pieces of type. This piece of lead was below the printing surface so it did not print.

"The term 'leading' is not used in current technology so we are getting into the word line space. Line space does two things: one, it creates a horizontal strip of white for the eye to read across. The eye is a very lazy organ. It is pulled down by the force of gravity. On a vertical surface you need every help you can get to get the eye to read across. A horizontal white space gives the eye something to go across.

"As the lines begin to separate you are lessening the chance of 'doubling' and reading that same line over and over again.

"I think it is worth mentioning also what is called solid spacing or no line space really. In effect, and [110] in actuality it means that there is still some spaces between there. In the metal type you had the pieces of metal with the characters on there, and there had to be a shoulder to prevent the characters from meeting. If you put two lines of metal type together, what is called 'set solid', there still would be a white area between those lines.

"Q. Are there generally accepted standards in the field for line spacing? A. Generally. It runs about 20% of the point size used as the guideline, and there can be exceptions but that seems to be the more common guidelines.

"Q. Why is letter spacing important? A. Two reasons. Letter spacing within a word is important in that if you have letter spacing that is too open what the eye tends to do is in one word perhaps read two words, and the person has to figure out whether that is the two words or one word with one large space in there. The opposite of that is if the letters are too close together or, in fact, overlapping. It creates a shape that is unfamiliar to the eye, and the person has to go through some logical search to say, 'Is that indeed an a or an ao combination?' The other thing is when they overlap they create black spots in the text that tends to attract the eye to the darker areas in the [111] block of copy so that the eye sees those rather than reading the block of copy.

"Q. Are there generally accepted standards in the field for

proper letter spacing? A. The only standard you would go by and would be able to put on it is what letter spacing is created by the type designer at the time of type space design.

"Letter spacing will vary depending on the type face and size that you are using. Inherent with computerized phototype setting or type imaging equipment, as the type gets larger, it will automatically increase the letter spacing or add a little space as the type becomes smaller.

"Q. Why is more spacing significant? A. Because we don't read one word at a time. We read in what is called groups of saccadic jumps so that you read a series of three or four words at a time. By adding too much word space you are forcing the reader to read one word, then another word, and then another word, and what is happening is the eye will read the words rather than perceive the information.

"Q. What, if any, is the generally accepted standard in the field with respect to word spacing? A. Standard would be approximately the space of a lower case 'n' in the type face and point size being used.

[112] "There are variables to that. The maximum space would generally never be larger than an 'en' space. In metal type, there were spacing pieces of metal that had spacing relationships and an 'em' was the largest. We are speaking about a point size. A ten point 'em' would be ten points high by ten points wide and an 'en' space would be half of that width, and that would be the maximum. The 'en' would be half the point size.

"Q. Why is type face important? A. A very large number of type faces are specially designed to do a specific task. They are a tool for communication, and you have to use the correct tool to produce the correct type of communication. The same goes for type faces. And again this same analysis would hold true. If you don't use the correct tools in the correct way, the end result will not be what you wanted it to be.

"Q. Why is production quality important? A. When you

get it all said and done you can have the best type face down, the best line length, the best typographer putting it together, and the best layout. It is all for nothing if the black on white paper is not readable because the printed quality is such that it is overprinting and you cannot read the letters. If the [113] letters are filled in for example because of an over inking, if you're running a reverse image, a white image on blackstock, you are running two very bad colors that make it very difficult to read. No matter how much work you do to set up the system to communicate if your production of that system doesn't come out right then you are not going to be able to succeed.

"Q. Is there a generally accepted standard in the trade for production quality? A. I guess the same standard would be that you would have a dark dense image for the letters, that there would be no filling in of what is called counters, and that the edge of the characters will be sharp and well defined.

"Q. Is there any significance to the use of lower case printing, printing in lower case versus upper case? A. A great deal. Lower case typography is more readable than all capital typography. It takes up less space than caps. It is more pleasing to the eye than all caps. Lower case letters grew out of handwriting.

"Capitals grew out of what was essentially signage inscriptions on buildings and monuments built during the Roman Empire. It was first done with a brush and then chiseled afterwards.

"The lower cases sprung out of writing. They are more [114] homogenous.

. . .

". . . What happens they form a word shape. The word d-o-g with the ascender on the d and the descender on the g coming down it forms an outline shape that is stored in the reader's mind and serves as a shape to recognize it when the word is seen later on. All capital words form a rectangle as a visual identifier to the eye."

* * *

MR. HITOV: "Q. I would like to show you these two cards, and ask you if you can identify those? A. They are the two cards that you sent me to ask me what I thought of the typography presented on them.

"Q. I note on the yellow card there is some pencil notations. Were those made by you? A. Yes, you spoke to me over the phone. You said you would be sending the cards to me and would want the comments so I wrote them down on the side of the card so if in case you caught me at a bad time I would have [115] something to refer to them. It really isn't necessary.

"Q. I would like to have this attached to the deposition as Plaintiff's Exhibit.

* * *

"Did you analyze these cards with respect to the elements you have just described? A. Yes, I did.

"Q. What did your analysis show?

* * *

A. Would you like for me to identify them?

"Q. Why don't we go through the elements one by one. A. I looked at the cards and analyzed them in respect to choice of type face, line length, line spacing, word spacing, letter spacing, final production [116] quality, and the layout. The typography layout of the piece itself.

"Q. What is the type size or sizes that are used on these cards? A. Since this really isn't in the true essence a type face, what we need to do is to do a measure and determine how if it was a type face what size it would be. The largest of it, type on this card is six point. The smallest is somewhere around five point seven five, or five and three quarters point.

"Q. How does that compare to the generally accepted standard in the field? A. The six point is one of the smallest type faces that you can get off type imaging equipment. Five point seven five is below that size.

"Now there are specific type faces designed which have a smaller image than this, but they are designed for specific purposes, primarily pharmaceutical labels on pill bottles and that kind of thing. Within the commercial type setting, six point is the smallest you can get."

. . .

[118] MR. HITOV: "Q. What is the generally accepted standard for text generally, text copy? A. Two to four points larger than, somewhere between nine to eleven point type.

"Q. Did you measure the line length of these cards? A. Yes, I did. The line lengths in picas, which is a measure of type. There are twelve points to a pica and six picas to an inch. In pica the shortest line is approximately twenty five picas and the longest line is about thirty nine picas. For this particular point size type, it was two to three times longer than would normally be acceptable. In fact, if you did a word count, just because we did mention that earlier, if you did a word count on these, which I did yesterday before I came, again the line lengths are generally two to three times longer in length than is acceptable.

"Q. What is the line spacing of the cards? A. The line spacing is set solid although there is a white space. There is no additional spacing involved and for specially something that is this small and has a line this long you would want some extra line [119] spacing probably.

"MS. JANOS: For the line on which card? He has two cards in his hand. A. They are both set solid and neither one of them produce better reading ease. You would want to add probably two points of leading to these. They are both set solid.

"Q. What did your analysis show with respect to letter spacing of the cards? A. It was terrible.

"MS. JANOS: Objection to the answer."

MR. ALIOSI: I would object.

THE COURT: The word "terrible" may go out.

MR. HITOV: "A. The letter spacing was inconsistent and overlapping primarily because it was set on a typewriter of one size and reduced to approximately half that size. It's not that typewriter type spaces this bad. At its normal size it spaces satisfactorily but when you reduce that down to small variances you have two characters coming together to each other, and it indeed begins to look like they are going to touch, and if you have a poor printing quality, as you do here, the over-abundance of ink does, in fact, make those two letters appear to touch so that you have letters touching here. You have inconsistent spacing.

[120] "Q. What did your analysis show with respect to the word spacing? A. Word spacing was in most cases an 'en' space and sometimes even larger than that — far above what would normally be accepted as being good typographic quality.

"Q. Do you know exactly how far above the accepted typographic 'en' space? A. Well, if you say the maximum normally considered would be an 'en' space and an 'em' space is twice that and these were a little less than an 'em' space, and in some cases larger.

"Q. What did your analysis show with respect to the use of upper cases versus lower cases? A. Only one side of one card was set in caps and lower.

"Q. Which card was that? A. That is the English version, Page 1. Page 2 of the English version and Pages 1 and 2 of the Spanish would all be set in capital typography.

"Q. What did your analysis show with respect to the production quality of the two cards?"

Mr. Haley noted that — I will repeat the first sentence, which makes no sense, and which he noted in his corrections. He did not recall what he said but it [121] is a nonsensical sentence.

"Page 1 of the Spanish version, where there are obviously

black spaces in the text, where letters come together or appear to touch primarily from an overinking, and Page 2 of the English version, where the copy is quite gray, you are running too gray, one copy is quite gray and the other is quite black, on both of them the edge definition is not as good as it could be or it should be.

"Q. What kind of typeface was used on these two cards? A. Technically it wasn't a type face. It was set on an office or some type of typewriter and it is interesting because I am involved now with a training program for the company I work for. We are training Xerox and other —

* * *

A. It is typewriter output. It is not a type face.

"Q. Is the type itself a serif or a sans? A. It is a sans serif type.

"Q. What, if any, is the significance of that? A. As I mentioned earlier, a sans serif type is more difficult to work with. It is more difficult to make [122] as readable and as legible as a serif type, which is one of the reasons most of the books are in serif type, and we have covered that earlier as to why. Or did we?

"Q. No. Why don't you? A. The reason being that the serif again forms a line for the eye to move across or some sort of crutch to move across horizontally upon the page. Sans serif does not have that benefit. It is difficult to maintain the eye going horizontal and not falling through the cracks between the letters and between the words.

"Q. In analyzing the typography of the notices, did you notice anything with respect to emphasis, an effort to emphasize certain words? A. Yes. There were attempts to emphasize certain words and phrases. The only way you can do this on typewriters, on this particular typewriter, is to underline them rather than setting them in bold face in typography or even in changing type style.

"Q. Does it make a difference from a typographic point of

view whether an item is underlined or set in bold face for purposes of emphasis? A. A bold face will obviously stand out more. If you look at this particular card, it is a mass of gray. If you have a bold face or change of type style in there, the point that you wanted to highlight would stand out [123] more. It would attract the eye to those particular places.

"Q. In analyzing the cards, did you notice anything with respect to the Spanish copy concerning accents? A. The accents were drawn in by hand. Accents are normally type face sensitive. In reading this style these were drawn in by hand and obviously do not go with the type face or the type style in question.

"Q. With respect to text readability, how does the various typographic elements interrelate? A. They interrelate to produce something that in my estimation is a typographic abomination.

. . .

[125] MR. HITOV: "Q. Can you explain in more detail how the various elements, as you have analyzed them, with respect to these cards act together? A. You could set these cards in one element that would perhaps not be the optimum or ideal. You could set them in six point type, but that, in fact, that they have been set in six point type, and very long lengths, compound the problem. If you set it in six point type and made the two columns of type, you will make it easier to read and still accomplish the same purposes. The size is very, very small. There are type faces designed which take up no more space than this that are, in fact, larger than this type style and are easier to read.

"They are designed to work in small sizes. There are no additional leadings. With this length of line, you would need to have more additional leading so that it is easier to read.

"The problem is that there are so many things wrong that you kind of go off the typographic scales for guidelines. How much more you need to open this up, I wouldn't know, because the line length is so long and the type face is so small."

• • •

[126] MR. HITOV: "Q. Have you formed an opinion based upon your analysis of these notices of the effect the typographic layout and design of the notices would have on the likelihood that the notices would be read? A. My opinion is that these would be highly unlikely to be read."

• • •

[127] MR. ALOISI: On Page 45, on cross examination, the witness was asked: "Your expertise does not carry yourself into the next step and say that you can determine whether or not someone would read it?"

And his answer was, "That's correct. I could only say that it would seem to be highly unlikely that someone would read it."

THE COURT: I will allow it both ways, one for and one against. I will allow both to stand.

MR. HITOV: "Q. Does typographic layout and design effect reading comprehension? A. Yes, it does in that something that is well laid out typographically is easier to read.

"There is no, to my knowledge, statistical information based on it although comparisons such as the Evelyn Wood Reading School show that the faster you read the more comprehension you have. The bigger the type, the easier it is to read, the faster you are reading, you read the information in groups rather than the extreme opposite, which would be struggling with individual letters and individual words trying to make them out and then put them together into a meaning that makes sense. There is a direct relationship between comprehension and typographic expertise.

[128] "Q. Have you formed an opinion regarding the effect of the typographic layout and design of these cards on a reader's ability to understand the notice, the information in the notice? A. It is my opinion that it would be very difficult for a reader to do this. I had a reason to read these. You sent them to me. I read them two to three times. I struggled

through them to get to the message, myself, to find out what was being said. A lot of it was the typography. It was not easy for me to do.

"Q. Assuming that these notices had to be printed on a standard stock card of the same dimensions as those cards marked as Exhibit 1, could the typography of the notices be improved? A. Of course."

MR. ALOISI: Your Honor, I move to strike. The question asked was: "could the typography of the notices be improved?". His answer was, "Of course".

We are getting into what could have been done.

THE COURT: As I stated earlier, I will allow him to go so far but not beyond that. I will strike the balance.

MR. HIRSH: Your Honor, if I might, one of the issues is how would a typographer do it some other way. If the Court decides that the evidence is that one or the [129] other party did not care it seems to me that that is a different consideration.

. . .

[130] MR. HIRSH: "Q. What does 74% of standard IBM type equate to in points? A. Nothing.

"Q. Can you explain why? A. IBM typewriters type is a generic term. It is like saying a General Motors automobile. Which IBM type? There are probably 30 to 50 different type styles available from IBM Company for their typesetting equipment. Their typewriters and numbers of type sizes vary from, I believe, nine points up to something like a fourteen point. 74% doesn't relate to anything.

"Q. In your opinion, would it be typographically acceptable to photo reduce standard IBM type of any size? A. What you are doing is —

. . .

"Q. Would it be, in your opinion, typographically acceptable to photo reduce 74% standard IBM type of [131] a ten point size? A. No. Again, you are using a tool in the

way it was not intended. Typewriter type was designed by a person within the constraints of that particular machine to do the best job possible, to have the best possible spacing relationship which is very difficult with the limiting system available on typewriters, and to take that and reduce it by 74%, you are reducing the effectiveness of that particular designer or engineering by that same percentage.

. . .

"Q. You mentioned that there are some constraints inherent in a typewriter. Could you explain in a more detailed manner what constraints a typewriter imposes on typing?

A. Most typewriters are on mono space and that makes every letter whether lower case i or lower case l and capital m or a number all take up the same amount of space. That inherently means that you have spacing problems and you have design problems in type face designing of the lower case. The lower case is a great deal smaller and it takes up a lot less space than a capital m. Office typewriter type is mono spaced. Every character has the same space. In addition, most [132] typewriters type are very monotoned which in a way detracts from readability in that most type face designs have a thick and thin quality to them to look like serif type design. There are hair lines and bald places in the stock of type face itself. Most typewriters type is a monotone type.

. . .

"Cross Examination by Ms. Janos.

"Mr. Haley, you testified that you did consulting work?

A. Yes.

"XQ. You mentioned one or two different firms. What type of firms do you consult for? What kind of business are they in? A. They are in the business of, they are either firms like Xerox which is in the business of producing type imaging equipment, or type design firms like TSI which is in the business of producing new type face designs.

"XQ. Are there other experts in the field such as yourself

that have the kind of background that you have in this area, and in the Massachusetts area? A. The Massachusetts area. There are a number of photo typesetting manufacturers in the Massachusetts area and in the New England area.

[133] "They each have resident type designers or a number of type designers that are experts in typography. Some corporations would be CompuGraphic, Wang, which has typesetting functions also.

. . .

"XQ. Are you familiar at all with the type of typography that the Department of Public Welfare has for its uses? A. No, I am not.

"XQ. Is the typography, the right word? A. Probably the word you are referring to is [134] type face and type face equipment that they have available to them?

"XQ. Right. A. No, I am not.

"XQ. If you were to consult with a firm and help them set up a typesetting facility what type of machinery and personnel is needed to set that up? A. Number one, I don't help them. I am not that kind of consultant. I would not help them set up a typewriting operation. My field of expertise, although I am familiar with that area, I would not be called a consultant. My field of expertise is in type face design and typography and typography design.

"XQ. From your experience in this area, if you were going to set up the typesetting facility function, a very small system of one person, how much would that be? A. It would probably cost you between twelve and fourteen thousand dollars for the equipment and the type in a processor phototypesetter and processor to process the output from it.

"XQ. How much output would a system like that handle? A. A photo typesetter of that kind would produce approximately 25 to 50 lines per minute of type, on type per a line of type especially being on that is eleven pica, eight point line of type.

[135] "XQ. I guess, I am not sure how to phrase the ques-

tion. All right. But I don't mean output in terms of lines. You could put out, how much work load could it handle? A. I don't know that would be depending on what kind of work you are doing. That's why I brought it down to lines. If you are running books, you can set — I am trying to think here. There are publishing houses that put out several volumes of books a month that are using the same kind of equipment. Maybe that is a good way to put it out.

"XQ. You mentioned the machinery. What type of machinery would we need? A. Direct entry phototypesetter is the generic name for it.

"XQ. You said that cost would be approximately \$15,000? A. Somewhere between eleven and fourteen thousand for a entry level machine.

"XQ. The type of personnel that would be needed to run that machine is called what? A. You can train an office clerk or somebody who has been familiar with office equipment, word processing equipment to operate this equipment and produce type. To produce what would be called fine typography would [136] take somewhat of a lengthy training program. Somebody able to typeset manuals and books is a relatively short training period.

"XQ. When you analyzed these two cards, you ran through the letter and line spacing and the type spacing and those factors in them. In the beginning, you were discussing them both together. Could we just look at them individually for a minute. If you can tell me if there is any differences in type of spacing between the two cards? A. Well, each card has too much space on one side and not enough on the other. The yellow card, Page One, is set in capitals and lower cases which is an improvement over the all cap typography.

"XQ. What is the size of the yellow card, Page One, dated December 26, as far as to the type in the second page of the card? A. It is approximately six point type. It looks smaller because it is approximately the same size within a quarter

point of the other type. I can explain that to you if you want me to, but I would have to draw a picture as to why. The reason here is that they look larger because you are looking at just capital letters. Here the page is taking up by an ascender and descender. What you are looking at is the height of the character.

[137] "XQ. What you are saying is that the size of the type on both of the cards is pretty similar, but the type of page two which is all caps appears to be larger because it is set in all capitals? A. That's correct.

"XQ. You would approximate that as six point type? A. Six point type.

"XQ. You are, in fact, approximating because this is not typeset? A. That's correct.

"XQ. It is a — A. It is a reduction from a typewriter.

"XQ. Reduction? A. That's correct.

"XQ. You discussed before the methods by which one would set up a type face notice or message and the difference between a typewriter which is reduced which is what we have here. Do you have the same flexibility when you are dealing with a typewriter and then reducing as you do with a type face? A. No, you do not.

"XQ. I mean flexibility in terms of word spacing, flexibility in terms of line spacing? A. No.

"XQ. And size? [138] A. Line spacing obviously on typewriters, you can type out a long line or shorter line as you want. Line spacing you can adjust also. The degrees of adjustment is also much more coarse than would be on typesetting machines. Word spacing and letter spacing are not adjustable. They are mechanical aspects of a typewriter. In photo typesetting and other forms of type imaging. Generally, there is a software within the system that inserts more spaces as the type size gets smaller. You are working some master size generally in a phototypesetter. Although, there are deviations to that so that there are more spaces inserted between letters when you enlarge them.

"XQ. It is not in a typewriter? A. Not in a typewriter, that's correct.

"XQ. You were talking about a sans serif? A. Yes.

"XQ. Those are terms that relate to typesetting, is that correct? A. They relate to type styles, yes.

"XQ. Type styles in typesetting relate, do they, to the typewriter? A. Yes, they do, as a matter of fact. They are typewriters that have serifs. Although the function of the serif in the typewriter design is somewhat different [139] in function.

"XQ. Could you explain again the serif? A. It is a little foot on the bottom of the line.

"XQ. You mentioned before that if you got this card in the mail that you would probably not read it because of all the reasons that you discussed before about the spacing and the boldness and the lines. I am not going to go through them all. A. Yes.

"XQ. Is it fair to say that all of those items that you mentioned make it more difficult to read? A. Yes.

"XQ. And more difficult to understand? A. Yes.

"XQ. Your expertise does not carry yourself into the next step and say that you can determine whether or not someone would read it? A. That's correct. I could only say that it would seem to be highly unlikely that someone would read it.

"XQ. Can I ask you, are you on Food Stamps? A. No.

"XQ. Do you receive Food Stamps? A. No.

"XQ. Do you have any sort of public assistance [140] benefits? A. No, I do not.

"XQ. You understand when you are making these statements here that there is a particular population that is receiving this card, that it is not going out to the public at large? A. That's correct, I understand that.

"XQ. In order to compensate for some of the defects that you have stated; that is how many times would you say that I would have to read this in order to begin to overcome all the

capital letters and the length of lines? A. I don't know that. I can't answer that question because it is going to vary from person to person from situation to situation and there are really no —

"XQ. Assuming someone was to read it. A. I can read it a couple of times before I can really get through it and then understand it I can answer for me. I don't know for anyone else.

"XQ. Let me just ask you, Mr. Haley, I brought some samples of other kinds of typing and spacing and sizes just for some comparison. I thought it would help me to tell you the truth and let me just show you. It will probably be interesting for you and not me. A page of today's Globe which is Friday, September 10, 1982. It [141] is an article on the Globe college football. Could you just take a look for me at the paragraph entitled Lehigh versus Maine, and tell me the size of the type that the Globe is using in that. A. That particular size is approximately five and a half point type. It is a Helvetica design that is designed to work in especially small point sizes.

"XQ. That is a certain type of type face? A. That's correct.

"XQ. You mentioned earlier that most type faces are not as small as this one is. A. This is a style of type that has been designed. Most sans serif or very large process typography is set in this particular type style. This particular example of this has some special kinds of things to it so that it can be used at smaller sizes than is normally used. This kind of thing is done in newspaper quite commonly.

"XQ. I would like to mark that for identification as Exhibit 1.

"(Newspaper clip dated September 10, 1982, Page 37, marked as Defendant's Exhibit No. 1.)

"XQ. I want to show you another page of today's Globe which is in the left hand corner here. It is an ad entitled super-

visory second shift. If you could tell me [142] the size type for that? A. For supervisory or the small type?

"XQ. The small type underneath it. A. The small type underneath it is approximately six point type also. If you want exact I can measure.

"XQ. Just approximations. A. It is approximately six point type, probably five and a half because it is in a classified section.

"XQ. Are most of classified sections at five and a half? A. It is, in fact, sizing that used to have a name. It is called an agate which is a five and a half point type. Normally, you would take a six point type design and shorten the descenders and that is so that it will fit on a five and a half point body. They figure that you can't use anything less than that.

"Ms. JANOS: I would like to mark that as Defendant's Exhibit 2.

"(Newspaper clip dated September 10, 1982, Page 57, marked as Defendant's Exhibit No. 2.)

"XQ. One last time. Here is a sample that I am going to show you. It is a copy of an application for Food Stamps recipients fill out in order to be eligible for Food Stamps. I am showing you Page One of that [143] application and there is a paragraph which explains how to fill out the form. Could you take a look at that paragraph, to begin to apply for Food Stamps, and tell me the size that is? A. That is approximately ten point type. You can see at the top the serif in the application for Food Stamps. They have the feet at the bottom of the letter.

"XQ. The words application is in ten point type? I am just using that as — to begin to apply for Food Stamps is approximately ten point type.

"XQ. Could you just briefly explain this. You did testify on how you determine these sizes of the type. Could you explain that again? A. It is difficult without drawing a picture, but yes. Type originally was a letter or a raised image on a piece of

metal. There are six point pieces of the metal and ten points pieces of metal and twelve point piece of metal. You have to have the total ascender and the lower descender of the letter and some room called the shoulder so that during the production process the parts of the characters wouldn't fall off as you are printing. So type sizes would be from, let's say, if I can do this right, if you measured it from the line to the succeeding line you would be able to determine the size.

"XQ. Is ten point type twice as large as five point [144] type? A. Not necessarily.

"XQ. Not necessarily? A. That's correct. It depends on whether it's photo type or not because photo type is proportional. In metal type it is not necessarily so and it complicates the issue further because there are different type faces that may also be classified as ten point type and appear in actuality to be varying sizes from each other.

"XQ. Am I correct in saying that when you look at paragraphs like the one you just looked at of Page One of the Food Stamp application, which is ten point type, it is not necessarily twice as big as the five point type on the other page? A. It is quite possible that it is not. It doesn't look it to me. In fact, that is one of the things that they could have done or will do in a type face design for a small size in the lower case character. They would increase the proportional size of those lower cases so that they are quite large because that's the letter most familiar to the eye for reading so that you get the most area for those characters within the constraints of the point size.

"XQ. You testified a little bit earlier that it would [145] take a couple of hours to lay out the two cards that you reviewed. Did you testify and I don't know if I missed out on the production of the type? A. I did not. You would have to define what you mean by production. If you say the lay out, the typesetting, the processing procedure to printing, prepress operations, and then the printing, I could make an educated

guess and say you could do the whole process in a week or less. If you went to a specialty house you could probably have it turned around over night in quantity. If you didn't, if you weren't paying for the turn around time and you were paying for the method, you could do it in a week.

"XQ. Does it matter how many copies you turn out?
A. Paper is the most expensive part.

"XQ. Let's say take a hypothetical guess of 16,000 of those. How much would you estimate that would cost? A. It would be difficult to say what it would cost. If you were having it printed, if you were having it as the optimal thing to do, less than a thousand dollars.

"XQ. That would not necessarily include the design?
A. In this kind of piece there is no design. There is a design in the application form you gave me. This is a very, very basic thing. If you took this to a printer or if you took it to a typesetting copy [146] manufacturer and said I want to order on this card, the printer would lay it out for you and typeset it. He would do the prepress work and it would be all one price. There would be no design charge. This application would entail a design more complicated.

. . .

"XQ. You were asked about a 74 percent of an IBM standard type, and you said that IBM has a number of type. Let me just show you a piece of what I might call as lawyer's standard type because it is the only ones I see. Let me show you for instance the Answer of Mr. Block to the Plaintiff's Amended Complaint which asks what would I consider a standard IBM type size. Can you approximate and, I know, type point is different than [147] typewriting and you can't make it exactly. A. This is approximately twelve point type. It would be referred to as pica. They are an IBM type. Although, numbers of sizes there are two main types. There are elite and pica. Elite being the smaller of the two. Elite has twelve characters to an inch. Pica has ten characters to an inch and this is the larger of the two.

"XQ. If you were going to try to come up with a measure of what 74 percent of that is, you would first have to translate that size into a twelve point type and then take 74 percent of that? A. Since it isn't type, you say approximately twelve point type in size, it is mathematically 74 percent thereof.

"XQ. If you could just take a look at that orange card for the time being. A. Surely.

"XQ. Assuming you didn't have typesetting facilities available, are you saying that it would be at least better from your perspective not to use all caps, would you use upper and lower cases to make that more pleasing to the eye? A. I am assuming I didn't have typesetting capabilities available to me, I would set it in caps and [148] lower cases and I would set it in two columns on the page so that you have a shorter line length. I would increase the space between the lines of type and if the typewriter has that capability I would restrike over the read carefully areas and any other important areas that you want read.

"XQ. Did you say that you should strike it over? A. Yes. It detracts from the character form but does make the character more bolder. It would be better than what we have here obviously.

"XQ. Have you been a recipient of public benefits? A. No.

"Redirect Examination by Mr. Rae

"Q. Ms. Janos asked you what type of firms you do consulting work for. Could you tell us what type of things you do for those firms? A. Without mentioning names, I have been involved with preparing training programs for those firms and increasing typographic communications. Increasing effectiveness of this typographic communication so that they can improve the typographical awareness within their ranks so that they can either sell type or manufacture type or talk with people who are in the typographic business.

"Q. Did you say that one of the firms that you are [149] training their personnel with respect to is Xerox? A. That's correct.

"Q. Turning to the Defendant's Exhibit 1 which is the excerpt from the Boston Globe. You testified that the paragraph regarding Lehigh versus Maine was set in Helvetica type style. What are the characteristics of that type that make it particularly suitable for typographic communications at a small type size? A. This particular version of Helvetica appears to have its lower case enlarged more than it would be in a similar design or similar design of Helvetica that is used in nine to eleven point size range. I think it is important to note that we are looking at the second Xerox copy. Looking at a newspaper here. The interior portion of the character of the eye of the lower case e. The interior lower case e has taken full range of design area to it so that it has a lot of area in it so that it does not tend to fill in. It is also designed somewhat condensed so that more characters can be put into a specific, into a given area than a type face that is, say, perhaps would consider normally proportional nor expanded proportionally so that the lower cases are both taller and somewhat more condensed than would be normal reading type face. You can't see it here, but in this particular type size here there are design traits that [150] are created to overcome the inherent poor printing process of setting with type on newspaper print type. Places where two parts of characters are joined are designed such that they have less of a tendency to fill in. Normally, these are designed such that they maintain as much space as they possibly can in a paper.

"Q. Are there similar characteristics of an agate type which are designed specifically for use in classifieds? A. These type face agates are type faces designed specifically for the Bell Telephone Directory. They are created specifically to react well to the printing process that they have to be put into. They use large size letters but use a small point size. They have

design traits for overcoming the printing process they are involved in.

"Q. Is agate type, does that have a serif or not? A. This is the classified, no, it does not.

"Q. Does that effect it in your opinion in this case? A. I guess, you could say it is a business decision. A serif takes up slightly more space. When selling advertising space you want to take up as little space as possible. You want to have as many letters in the same space as possible so there are type faces [151] designed for classifieds that have serif in them. They are not quite as space efficient as serif designs.

"Recross Examination by Ms. Janos:

"XQ. You talked about a kind of consulting work you did and you mentioned one and did not mention a lot of the others. What kind of communications are these companies putting out that they hope to reach or hope to have those communications used? A. One example would be a seminar that I just gave in California. I spoke on a varied number of subject. I spoke and carried on a day's seminar to plant personnel, production and design crews, to give them some insight to training them in typographic communications. They are involved in training programs with brochures with announcements for services, everything that you would think a large multimillion dollar corporation would be involved in. Xerox Corporation is currently involved in producing equipment that sets type electronically so that their goal is to try to replace office typewriters with that at approximately the same cost. What they are doing is trying to determine what type is better and to explain to their internal staff why it is a better product. It is a very large printing system distribution. There are various areas in Xerox that know about type and there are those that are ignorant about type and the [152] educational programs are for those people.

"XQ. Just to boil it down. Your whole science and your

career and your years of studying, are you really getting at making something readable? A. Communication.

"XQ. Making something so that someone will want to read it? A. I started out in the business as graphic designer and then lettering artist. I got into the business in communication. It seems the more that we can help people to communicate with others and have a little bit of something to do with that maybe it makes what I am doing a little bit more worthwhile, so it is communication.

"Redirect Examination by Mr. Rae

"Q. With respect to your opinion concerning typographic acceptability of these two cards, is it your opinion that these are simply not optimal or was it your opinion that these were unacceptable?

* * *

"A. I have already answered the question.

"Q. Could you state your opinion concerning the typographic quality of these notices?

"Ms. JANOS: Objection.

[153] "Q. The impact that has on their readability?

"Ms. JANOS: I think he has already answered it, but go ahead. A. I answered it before, and I said a typographic abomination. I didn't arrive at that opinion by comparing it to typography, the best typographic example, the very best, I compared that to all examples of typography that I would be familiar with in the world and said that this is what is acceptable and what is not. The thing I am looking at is I am holding an Exhibit 1 which is typographically unacceptable in my opinion.

"MR. RAE: I have no further questions.

"Recross Examination by Ms. Janos

"XQ. Mr. Haley, those are not typography, is that correct? A. That's correct.

EXCERPTS FROM TRIAL TRANSCRIPT
OCTOBER 14, 1982

[4]

SUE CONARD

Direct Examination by Mr. Hitov

Q. Would you please state your name for the record?

A. Doctor Sue Conard.

Q. Doctor Conard, what is your educational background?

A. I have a BS in Human Relations and Child Development from Oklahoma State University, a Master's Degree from Harvard University, a Certificate of Advanced Study, and an E.B.D. in Reading and Human Development from Harvard University.

Q. Is that E.B.D. commonly known as a Doctorate? A. Yes, it is.

Q. Under whom did you study at Harvard to get your doctorate? A. My advisor during all my advanced work was Professor Jeanne Chall and she also was the Chair Person at my thesis.

Q. What is Doctor Chall's position at Harvard? A. She is a senior faculty member, a Professor of Education, head of the Reading Department and Director of the Harvard Reading Laboratory.

Q. Doctor Conard, what do you do for a living? A. I am a lecturer on education at the Graduate School of Education, Harvard University, and I teach courses in reading. I am a reading clinician and I maintain a private [5] practice.

I also do consulting and training work for schools, business and industry.

Q. Could you just give us an example perhaps of some of your clients in industry? A. Yes. I have done consulting work for Digital Corporation in revising training manuals. I have done work for Smith, Kline and French, Pharmaceutical Corporation, and I have been a consultant for many years for Ginn & Company, a subsidiary of Xerox.

Q. I believe you mentioned that you did some work for a pharmaceutical company? A. Yes, a colleague and I did work for Smith, Kline & French.

Q. What type of work? A. We were working on package inserts to see if the customers could understand what they were told to do with the medicines.

Q. At what level did they ask you to develop this? A. At about the sixth grade reading level.

Q. What, if any, publications do you have, Doctor Conard? A. My qualifying paper called Standards of Reading Difficulty, Research and Application, and my thesis The Difficulty of Textbooks For the Elementary Grades, a Survey of Teachers and Publishers. I have just [6] recently finished a paper for Ginn called Readability and Readability Formulas. I have co-authored several papers, one called An Analysis of Textbooks In Relation to Declining SAT Scores.

Q. That probably will give the Court some idea of your background in publications.

Do you belong to professional organizations? A. Yes. I belong to Phi Delta Kappa, the National Society for the Study of Education, the International Reading Association, and the American Educational Research Association.

Q. Who is your supervisor? A. The head of the Reading Department, Professor Chall.

Q. Would you describe your working relationship with Professor Chall? A. I think I would describe it as collegial. We both teach courses. We do joint consulting work and also have co-authored several articles.

Q. Have either you or Doctor Chall worked on reading tests? A. Doctor Chall is one of the authors of the Dale-Chall Readability Formula with Edward Dale from Ohio State University.

Q. Have you ever done any work on that? A. We are currently working on a revision of the [7] formula. The first

formula was published in 1948 and a new revision will be published sometime next spring providing we are all here.

. . .

MS. JANOS: I will admit that Doctor Conard is eminently qualified as a reading specialist.

MR. HITOV: Fine, your Honor. We would like to submit Doctor Conard's resume.

THE COURT: You may. The Doctor is to be regarded as an expert in reading.

. . .

Q. Doctor Conard, have you been asked to analyze anything for the purposes of this lawsuit?

. . .

[8] A. I was contacted earlier this year by Steve Hitov [9] and asked to do an analysis of two Food Stamp Notices.

Q. Doctor Conard, would you look at these two cards that have been marked Plaintiff's Exhibit 2 and tell me whether you recognize them? A. Yes. These are the cards that were sent to us.

THE COURT: As a preliminary to analyzing the cards themselves, the Notices, were you asked to do any study or were you given any information pertaining to the Food Stamp laws themselves?

THE WITNESS: No.

Q. Who did you work with in doing the study? A. I worked with Jeanne Chall.

Q. What did you analyze these Notices for? A. We did a readability analysis of the Notices to determine their difficulty, and then we used this information to see if they were able to be read and understood by the Food Stamp Recipients.

Q. Would you tell us what a readability study is? A. A readability study is a study that is generally done to determine the difficulty or ease of reading text. It generally involves applying a readability formula, which is the more quantitative aspects of difficulty but it usually involves qualitative aspects as well.

Q. Who would you normally do this type of study for?

A. Readability studies have been done in educational [10] research for quite a number of years. Readability studies are used by educational publishers, and in fact, most State adoption committees require readability information when adopting textbooks.

It is being used more frequently in business and industry in the last few years and also in governmental agencies, such as the Social Security Administration.

Q. Would you explain exactly how reading tests work, what they measure? A. Yes. How much detail would you like?

Q. Just enough so we have some idea. A. Okay. Basically, readability has to do with the difficulty of written text.

The concept of readability, like the concept of intelligence, is quite broad and is generally thought to include all elements and their interactions within a given piece of written material that affects the success that a group of readers have with it.

Readability research goes back to the 1920's. Two major goals are involved in this research. One is to find elements in text that are related to ease or difficulty, and the second goal is to be able to relate this information to readers of known ability. This is where readability formulas come in.

Readability formulas are statistical devices. They [11] are developed by looking at the various elements, usually the words in a passage, sentencing, the number of syllables affixes, this type of thing, and relating it to a set of criterion passages.

These passages must vary in difficulty and have a score assigned to them by an independent measure, using this as a measure of comprehension, and the score usually attached is between 50 and 75%.

Q. Excuse me, Doctor Conard. Would you explain the last part of your answer — 50 and 75% of what? A. Okay. Passages that were usually used to develop readability formulas, the Standard Test Lessons In Reading. These passages

vary in difficulty, and with each of them there is a grade level assigned, and what this grade level means is that this passage has been tested with a group of students, and that the grade level tells what grade level the students were in — who could answer 75 % of the questions or three-fourths of the questions.

Readability formulas developed in this way are regression equations, and if you are familiar with regression equations you know they are predictive devices. So readability formulas are intended to predict difficulty. They are not exact measures, and there is a standard error or measurement associated with them.

[12] However, when they are used for what they are intended they are quite reliable tools.

They co-relate highly with reader comprehension. They co-relate with judgments of teachers, librarians, and other people involved in education and they also co-relate quite highly with one another.

Q. I assume there is more than one of these regression analyses available. Could you name a few of them? A. Yes. George Clair, who is quite well known in readability, has defined over 50 such formulas that have been developed since 1920. Probably the better known are the Dale-Chall Formula, which was developed in 1948, the Flesh Reading Formula which was also developed in the same year, and the Fry Readability Graph which was developed, I think, in 1960.

Q. If I heard you correctly, you testified that these tests, among other things, take into account syllable counts and sentences and number of words in a sentence, and that sort of thing?

. . .

[13] A. Readability formulas were standardized on connected prose, and they assume a normal syntactic structure. If, indeed, you took a sentence and turned all the words around you would still get the same readability formula score. What we assume is that people are not going to jumble up words.

Q. Does that aspect enter into your analysis? A. No, it doesn't because all the sentences were in perfect syntactic order.

Q. Which test did you use to analyze the Notices? A. We used the Dale-Chall Formula. The Dale-Chall Formula is based on unfamiliar words, and these words are compared to the Dale list of 3,000 words which are words known and tested with fourth grade students.

The second measurement it uses is average sentence length.

We also use the Fry Graph. The Fry Graph is a newer readability formula, and one that people sometimes prefer because you count the number of syllables in a 100 word passage and again the sentence length, and then you can compute directly on a graph without having to do calculations that the Dale chart requires.

We also use the Flesh Reading Ease Formula.

The Dale-Chall and the Fry Graph define difficulty in terms of reading grade level score, which I think I [14] did not explain quite clearly.

A reading grade level score is not the same as grade placement. It means that students, for example, — if the passage scored 56 level on the Dale-Chall Readability Formula this would mean that students who score at fifth or sixth grade on a standardized reading test can answer approximately 75% of the multiple choice questions on this passage.

THE COURT: Was your analysis limited to fourth grade analysis?

In other words, was it limited strictly to what the words projected for the normal person or did it actually relate to the tone of the sentence itself with relation to —

THE WITNESS: The readability formula analysis, your Honor, is quantitative. That means that the rules have to be applied strictly and in order for it to be meaningful. For example, if you applied a Fry Graph and I applied a Fry Graph for it to be reliable we would have to follow the rules exactly.

What you are speaking of, as I understand it, is more the qualitative aspects of the text we analyzed and, yes, we did that as well.

THE COURT: Were you also aware that some of the recipients themselves were college graduates?

[15] THE WITNESS: Yes.

THE COURT: So if your intelligence quotient, if that was aimed at going to the lower norm, necessarily did not apply to those with the higher education?

THE WITNESS: The reason that the Dale-Chall uses this list of words based on the fourth grade is because it bottoms out at the fourth grade. It only is applicable for material that goes from the fourth grade to 16-plus.

There is a formula called the Space Formula that is applicable only to the first three grades. So that is why this fourth grade list is used.

The other two formulas that we used use syllables rather than words.

Q. Can you relate the results of your tests using those formulas? A. Yes. The two Notices were analyzed. Page 1, the gold card, and Page 2, the orange card, were analyzed. And just briefly, the gold card, the three samples of 100 words were taken for the Dale-Chall analysis.

The raw scores ranged from 7.30 to 8.31 with an average score of 7.87, which is converted to a grade level band of 9 to 10 grade-plus.

The Fry Graph Analysis of these same three samples show an average of 11th grade.

[16] The Flesh Formula does not give a reading grade level. It only gives broad descriptures as easy, very easy, difficult, very difficult.

Card 1 had a score of 50.82 which is, according to Flesh's descriptures, fairly difficult and can also be thought of in terms of a quality magazine.

Card 2, which is the orange card, according to the Dale-

Chall analysis for two samples taken because there were only 283 words. I believe, on that card, show an average of 8.29 raw score which is 11th to 12th grade reading level and a 12th grade on the Fry Graph, and on the Flesh Analysis 49.31, which he interprets as difficult or like an academic journal.

Q. You testified that various things that these tests count. How do these tests co-relate?

. . .

A. The test results for the Fry Graph, which uses syllables, was slightly more difficult than the Dale-Chall Test which uses words, but they were quite similar, 11th and 12th grade.

Q. Those tests, the Dale-Chall, the Fry and the Flesh, are they considered qualitative or quantitative? A. They are definitely quantitative tests.

Q. Did you evaluate these Notices from a qualitative [17] perspective as well? A. Yes.

Q. And what did you conclude? A. We looked at the vocabulary in terms of words that we thought were critical to the meaning of the Notice and we came to the conclusion that about half or less than half were critical.

I think there were only 16 words that we felt were critical to many of the passages.

We also analyzed sentencings in a more subjective way by comparing it to passages of known length that had been related to reading grade level and this, again, compared to about a 10th grade reading level.

I also did a more impressionistic analysis of the card. This is admittedly subjective, but also addresses aspects of readability that everyone believes has to do with difficulty but as yet we don't know how to measure.

One of those is organization. Organization is usually thought of in terms of the organization of a book, the organization of a chapter, a passage, or even a sentence.

In my opinion these Notices were poorly organized. You had to move from one card to the other and information that addressed the same idea was not given in the same paragraph.

• • •

[18] Q. Doctor Conard, you may continue. A. Okay. Another aspect that actually cannot be measured is the presence of many conditional statements.

Research has shown that conditional statements are much more difficult to process, and these cards have a lot of "if then" kind of statements that are very difficult for—I say more difficult than direct statements to process.

Furthermore, there seems to be conflicting information.

THE COURT: Excuse me. Are you talking about the process? Are you talking about to comprehend?

THE WITNESS: I am talking about the way humans process information, which is part of comprehension, yes.

A. (continuing) The next aspect was that conflicting information seemed to me to be given. Both of the cards were talking about reduction in benefits, and yet the last statement says, "This is not an additional reduction in your benefit" and it was not until I checked with Mr. [19] Hitov that I realized that the word that I should have been focusing on was "additional" reduction in benefits.

I think that is very misleading. Let's see what some of the other things are.

Another aspect that I think makes the cards difficult, and this again is subjective, is the use of "from 90 days to this date".

It seems to me that a date could be given rather than having to figure from this time how many days this is.

I think that is more difficult than using the other approach to giving dates.

Finally, and this again is my own opinion, when I first looked at these cards I had to get a magnifying glass to read them.

• • •

Q. Doctor Conard, presuming, therefore, that you used a magnifying glass because you found the type too small —

[20] Ms. JANOS: Objection, your Honor.

THE COURT: Excuse me. I would like to ask an additional question.

Ms. JANOS: I have an objection, your Honor.

THE COURT: Well, there isn't a question before me. The Notice projected a statement somewhere incorporated within that this is either a reduction or a termination of benefits.

Did you analyze that as to its meaning and what it meant to you?

THE WITNESS: That is one of the —

THE COURT: Not what it meant to you but what it might have meant to a recipient receiving such a Notice.

THE WITNESS: I found it very difficult to understand, and in fact that was one of the things that I had to ask Steve about. I think this is the same statement you are speaking of.

I was not sure whether people who were being terminated and people who were being reduced were the same population or not. This was confusing to me, yes.

THE COURT: And it would have been confusing in your opinion to the recipient of the card?

THE WITNESS: Yes, sir.

Q. Doctor Conard, what, if any, co-relation is there [21] between type size and comprehension that you are aware of? A. In the readability one of the raw categories of factors relating to difficulty are physical factors. This has to do with type size, with the amount of white space on the page, with any illustrations, and this type of thing.

The name of the researcher who is generally associated with this kind of work is Myles Tinker. Most of his work was done back in the 1960's.

. . . .

Q. Within your field, within your expertise, what is the effect of these various factors on comprehension? A. Well, I

think it is that in order to read and comprehend a passage a person has to be able to see and recognize the words.

Q. How are those affected by type size, if they are at all? A. I am not an expert in typography, and I cannot speak to type size or this type of thing, but I know that I felt that these Notices were very difficult because of the physical attributes.

[22] Q. Have you ever been involved in analyzing texts for professions or whatever? A. Yes.

THE COURT: I am having difficulty following your sentences.

MR. HITOV: I'm sorry, your Honor.

Q. Have you ever been involved in analyzing texts for classrooms or publishers or what-have-you? A. Yes, I have.

Q. And in the course of doing that what is it that you look for? A. You look for all of these broad categories that I talked about. You look for physical and you look for organizational, you look for content and you look at the linguistic aspects.

I have done a lot of work for Ginn & Company, and I know that particularly for primary grades there is a standard that most States set for print size. I don't know what it is.

Q. How do these cards compare to that? A. The print is much smaller.

THE COURT: The print on the Notices that you were studying?

THE WITNESS: Yes, your Honor.

. . .

[23] (Analysis of Food Stamp Notices marked Plaintiffs' 19 for Identification.)

Q. Doctor Conard, what, if anything, have you prepared to set forth the results that you have just been testifying about? A. A report was submitted by Jeanne Chall and myself to you.

Q. At this point I would like to show you something that

has been marked Plaintiff's Exhibit 19 and ask if you recognize it? A. Yes. This has our report.

MR. HITOV: I would like to move that it be admitted into evidence, your Honor.

. . .

[25] (Plaintiffs' 19 for identification received in evidence.)

Q. Doctor Conard, to your knowledge have the Dale-Chall and Fry Tests been used to evaluate the reading difficulty in any other Notices in government assisted programs?

. . .

A. Yes, I do. I recently read in the Federal Register a report of the Social Security Administration using these two tests to rewrite SSI Notices, I believe, at a sixth grade level.

. . .

[26] (Pages 42337-42339 of Federal Register marked Plaintiff's 20 for identification.)

Q. Doctor Conard, at this time I would like to show you Plaintiff's Exhibit 20 and ask if you recognize that?

. . .

A. Yes, these are the pages that I read.

. . .

[27] Q. That is the Federal Register to which you were referring? A. Yes, it is.

. . .

Q. Have you done any work to inform yourself of the educational levels of Food Stamp recipients in Massachusetts? A. Yes. I reviewed —

. . .

[28] THE COURT: . . .

. . .

. . . Is all part of that education?

THE WITNESS: Yes, your Honor, I would say it was. One of the goals of a readability study is to define factors related to difficulty and then use this information to match materials thought to be appropriate to particular audiences when their reading ability is known, and so once we do a readability study we try to draw some conclusions about the appropriateness of the information we are working with for particular audiences.

In this case I reviewed a table provided by Doctor Mark Bendick. It is US Bureau of Census Data, Survey of Income and Education, on percentage of Massachusetts families receiving Food Stamps and the years of school completed by the head of household.

I think this is what we were referring to earlier when you said some of these people were people who were college graduates.

. . .

Q. Doctor Conard, I would like to show you a chart and ask [29] you if you recognize it. A. Yes. This is one of the charts we looked at to determine the reading level of the population.

Q. Doctor, is this the type of data that people who work in your field rely upon in conducting such studies? A. Yes. We oftentimes rely on the Census Data.

Q. What other data, if any, did you acquire from the study? A. Another chart that was compiled by the State of Massachusetts. It recorded the educational level of families receiving Aid to Dependent Children, and the findings were very similar to the ones that we had received from Doctor Bendick.

. . .

(Mass. Chart book "Aid To Families With Dependent Children marked Plaintiffs' 21 for Identification.)

Q. Doctor Conard, at this point I would like to show you something entitled Plaintiff's Exhibit 21 marked for identification. Do you recognize it?

[30] (Plaintiff's Exhibit 21 for Identification received in evidence.)

Q. Doctor Conard, what did Plaintiff's Exhibit 21, the chart book, tell you? A. It was quite similar, as I said, to the information we had received from Doctor Bendick that about 80% of the families receiving Aid to Dependent Children had graduated [31] from high school, and a little over 50% had one to three years of high school and 18% had an eighth grade education or less.

Q. Doctor, what, if any, co-relation is there between grade level and the information that you just testified about and actual reading level? A. There are some studies that have been done.

* * *

A. There are some studies that have been done that show that reading grade level is generally slightly lower than grade level attained.

Q. Are you aware of any such studies that you relied upon? A. Particularly for this study we relied on an article by Bendick and Contu in the Social Service Review, and I believe it was in 1978, called Literacy of Welfare Clients.

Q. Is that the type of information that experts in your field normally rely upon? A. Yes, it is.

MR. HITOV: Your Honor, we would like to move that that article be admitted into evidence?

THE COURT: I am not interested in whether she relied upon other experts in the field as I am upon the fact that she may have relied upon it in formulating her [32] conclusions.

Did you, in fact, so rely upon it?

THE WITNESS: Yes, sir, I did.

THE COURT: As well as all the preceding material?

THE WITNESS: Yes.

THE COURT: This is all a basis for the opinion that you rendered?

THE WITNESS: Yes.

THE COURT: On that basis you may have it.

* * *

What, in fact, is that co-relation?

A. For the population that Doctor Bendick and Doctor Condu reviewed studies concerning that the actual reading grade level was much lower than the grade level attained. Generally, a 9th grade school level was attained. As the school level increased the difference between reading level and school level attained became greater.

[33] Q: Based upon all this information we have been discussing and that submitted in the record, have you formed an opinion as to whether or not these Notices were difficult to understand?

* * *

THE WITNESS: Yes.

A. My general conclusions are based upon both Notices. I found that one is written in caps and the other in large and small letters. And generally it is thought that caps are harder to understand than small letters.

So both are difficult some times for different reasons.

* * *

[34] THE COURT: I thought she just did.

A. My opinion is based on both cards and I based it upon the quantitative analysis which showed it to be at high school level plus our quantitative analysis which indicates they were much more difficult than that. I would find it unlikely that high school graduates could read and understand these cards.

Q. Based upon your analysis of the Notice and your information regarding the reading level of Food Stamp recipients in Massachusetts have you formed an opinion as to what per-

tage of the recipients could be expected to understand this Notice? A. Yes, I have.

Q. What is that opinion? A. I would say that very few could read and understand these Notices.

THE COURT: Did you base it upon a percentage?

THE WITNESS: Yes, I did. Your Honor, let me turn this table over so I can show you. 21% of Massachusetts Food Stamp recipients are elementary school graduates. So I would venture that about 80% would find this hard to understand.

[35] Q. Doctor Conard, how difficult would it be to rewrite this Notice in language that would be easy to understand?

MS. JANOS: Objection, your Honor.

THE COURT: What is the objection?

MS. JANOS: My objection is that what the Department could have done or should have done is not an issue. The difficulty with rewriting it is not before this Court.

THE COURT: Sustained.

MR. HITOV: Your Honor, we would like to make an offer of proof that if the witness had been allowed to answer the question her testimony would be that this should be written at the seventh grade level.

THE COURT: At a what?

MR. HITOV: At a seventh grade level.

THE COURT: What did you say before that?

MR. HITOV: It would be quite easy to rewrite this Notice at a comprehensible level and that there are any number of people in the Boston area who could do so.

* * *

[36] *Cross Examination by Ms. Janos*

* * *

XQ. Doctor, is it a fair summary of the Study of Readability that the purpose of readability is to match readers and books? Is that a fair summary of what readability is? A. I would say partially.

XQ. It was initially designed to match children's textbooks and children, the textbooks with the children who would be reading those textbooks? A. With students that can go anywhere from children through adult learners.

XQ. Is the primary use of readability tests, in fact, for publishers and librarians and educational people so that that match can be done properly or as best as possible?

A. Originally, I think that is what it was used for an indeed I do know that educational publishers used it a great deal.

XQ. You stated in your testimony that there are a number of elements that come into play when you are analyzing a text for purposes of comprehension. Is that correct? A. Yes.

XQ. You stated that some elements are quantitative, that is the sentence length or the words themselves, is that [37] correct? That is one element of reading comprehension or readability? A. Word length is one of the elements included in the formulas, yes.

XQ. Is it true that another element in determining comprehension, and in fact a primary element in determining comprehension is looking at the reader who is actually going to be reading the text or the sample you are examining? A. Yes, absolutely. The reader is also a part of the match between the readability level of the text and who is going to read it, yes.

XQ. Is it fair to say that the reader's purpose in reading and his interest and background in the subject matter must also be considered by anyone using a readability formula? A. Because readability formulas are done on textbooks and because they were standardized on comprehension scores they are mainly used for determining relative difficulty and not for an individual pupil. When it is used that way what you are saying is true.

XQ. That the reader's interest and background, and I am not talking about readability tests as such, but to analyze comprehension, is the reader's background and purpose in reading and interest in the subject matter of primary and [38] foremost importance? A. Readability formulas generally —

XQ. Not the formulas, Doctor Conard. I mean readability for comprehension, determining comprehension as such.

A. Right. The formulas for standardized on 75% comprehension, which is thought to be an instructional level. Now if a student is interested and has a lot of background a more difficult text could be used, yes.

XQ. Doctor Conard, I believe you stated that you studied with Doctor Chall and still, in fact, work with her and that you consider her an expert and an authority in the field of readability, is that correct? A. Yes, that is correct.

XQ. I want to read you a short passage. Would you tell me if you agree with this passage: "To state that a given article on chemistry is comfortable reading for average adults because it has a predictive grade level of 7 to 8 is giving an incomplete picture. For those readers who have no interest or no background in chemistry the article will probably not be comfortable reading and they may get very little meaning from it. For other readers who are interested in chemistry and do considerable reading in the subject the same article will probably be most comfortable reading. This difference in ease of reading and comprehension may exist even though both [39] groups of readers have completed approximately $8\frac{1}{2}$ years of schooling and have the same general reading ability on a standardized reading test."

Ms. JANOS: For the record, that is a passage from a pamphlet entitled Formula For Predicting Readability by Doctor Jeanne Chall.

XQ. Do you agree with that statement? A. Yes, I would agree with it, and I would say that that is why more qualitative aspects are also analyzed.

XQ. You stated earlier that readability tests are statistical devices, they are formulas for determining the level of difficulty of a passage. Is that correct? A. Yes, for predicting difficulty.

XQ. And in doing so you generally analyze a particular

sample, you are taking a sample sometimes of 100 words?

A. Each formula requires different sampling. For example, the Dale-Chall requires approximately 100 samples. The Fry requires exactly 100 samples, and the Small Formula requires 30 consecutive sentences.

XQ. Would you agree that in terms of a proper statistical analysis it would be better to have a larger text from which to sample or be able to take two or three different samples of 100 words apiece? A. We took three samples of 100 words from the text. The formulas themselves are standardized on the various [40] samplings that are generally given with their directions for use.

XQ. So the 100 word sample is the sample you would use for the formula? A. Yes.

XQ. You stated earlier that the Dale-Chall Test is one of the most widely used tests. Is that correct? A. Yes.

XQ. And that is the test that you, in fact, applied or one of the tests that you applied to this particular test? A. Yes.

XQ. You stated earlier that the Dale-Chall Test utilizes in its formula the added sentence length. Is that correct? A. Yes.

XQ. And a list of 3,000 words familiar to fourth graders, is that correct? A. Yes.

XQ. You stated that the test is being revised currently but that the test that you used, in fact, used the list of 3,000 familiar words that were devised by Doctor Chall in 1948? A. By Doctor Dale.

XQ. By Doctor Dale in 1948? A. Yes.

XQ. It is correct, Doctor Conard, that the word "appeal" is [41] not on that list? A. Do you mind if I look?

XQ. No, not at all. A. All right. The word "appeal" is not on the list.

XQ. Is the word "federal" on the list? A. No, it is not.

XQ. Is the word "eligible"? A. No, it is not.

XQ. How about the word "benefits"? A. No, it is not.

XQ. The word "reduction"? A. No, it is not.

XQ. Is the word "television" on that list? A. No.

XQ. Is the word "computer"? A. No, it is not.

XQ. When the test is used are you, in fact, comparing the words from your sample to that list and then you determine what words are unfamiliar on your sample and that goes into determining the grade level? A. Yes, that is correct.

XQ. I believe you also stated that you utilized the Fry Test? A. Yes, we did.

XQ. And the Fry Test uses syllables as opposed to a list of familiar words? [42] A. That is true.

XQ. So that if a word contains more than three or four syllables would that be a word that would be a difficult word according to the Fry Test? A. The Fry Test does not use words with three or more syllables. I think the Small Test does. The Fry Test simply gives us a count of the syllables and the greater the number of syllables the more difficult the passage.

XQ. So, for instance, the word "federal" which has three syllables, would be considered more difficult — on the Small Test it would be considered a difficult word because it has three or four syllables? A. Yes.

XQ. And on the Fry Test its level of difficulty would be measured by the number of syllables that it has? A. Yes.

XQ. And the word "eligibility" again has three syllables? A. Four syllables.

XQ. Four syllables. That is why you are a reading specialist and I am not.

I notice, Doctor, in your analysis you came up with— there were some variations in the standard tests that we used. For instance, in the Dale-Chall Test it came out at a particular reading level and the Fry Test came out at a different reading level. Because of the [43] variations in the tests you would necessarily get different grade level results from different tests or would it be common? A. Because of the way the formulas are developed you generally get or you do not get exactly the same score with different tests.

There also is a standard error of measurement attached with regression equations, generally plus or minus one grade level for readability formulas that cover a wide range, two or three months for the more limited ones like the Space.

XQ. Would it be possible to get a variation in grade level for two or three or four years? A. Yes, it is possible.

XQ. Doctor, if I told you, and keeping in mind the Dale-Chall Test of familiar words, if I told you that a reader was, in fact, familiar with all of the words on the cards that you analyzed, and when I say "familiar" I mean two things. I mean they understood the meaning of each of those words, and I mean they were familiar with the context and the concepts of those words, would that effect your opinion as to the level of difficulty of those passages? A. I think that would be difficult to say because I don't know—are you speaking in general terms?

[44] XQ. If I said to you that a particular reader who read the passages that you analyzed understood all of the words on there, understood what a difficult word might mean like "eligible", "federal". They understood the meaning of the words and they also understood the concepts of the words "appeal", et cetera, would that affect your opinion as to the level of difficulty in a passage for that reader? A. It would not affect my opinion based on the formula because the formula goes strictly by the rules.

XQ. It speaks for itself? A. Yes.

XQ. But in terms of your qualitative analysis, as you called it, would that affect your opinion? A. I think with a qualitative analysis you do consider those things, yes.

XQ. Doctor Conard, did you in doing your analysis look at the Food Stamp application forms filled out by the Massachusetts Food Stamp recipients? A. No, I did not.

XQ. Did you examine the Notice of Recertification for Eligibility that is sent to the Food Stamp recipients? A. No, I did not.

XQ. Did you examine a Notice of Adverse Action, as it is called, received by Food Stamp recipients?

* * *

[45] XQ. Is it fair to say that you did not examine any of the forms that may be seen or are seen by the particular population we are talking about? A. No, I did not, only the Notices that were given to us.

XQ. I think you have stated earlier on direct examination that you are not familiar, as such, with the Massachusetts Food Stamp Program. Is that correct? A. That's correct.

XQ. So that you are not familiar with the procedure that a person goes through in order to become eligible? A. No, I am not.

XQ. The interview process and content of the interview that takes place when someone is on Food Stamps? A. No, I am not.

THE COURT: You are not one of those college graduates that is a recipient of Food Stamps?

[46] THE WITNESS: No, sir, I am sorry, I am not.

XQ. Doctor Conard, do you have Doctor Bendick's study of grade levels that was admitted into evidence?

* * *

XQ. Yes. This is a chart that was annexed to Doctor Bendick's deposition. It is his study of the grade level completed by Massachusetts Food Stamp recipients. Is this the study you used to make your determination of whether that text would be readable by these people? A. Yes.

XQ. You stated, Doctor Conard, that approximately 85% of the Food Stamp population had had a finished grade level of nine or more. Is that correct? A. Would you repeat that?

XQ. When you were making your analysis you utilized Doctor Bendick's report which states that approximately 85% of the Food Stamp population had a reading level or, excuse me, a grade level of nine or more? A. I believe it says 82% completed high school.

. . .

XQ. You stated, Doctor Conard, that you had some difficulty [47] with the size and the height of the Notice. Am I correct, that the difficulty you had with it was the size of the yellow card? A. It was —

XQ. Do you have the cards in front of you? A. Yes, I do. I called them gold and orange, so I will have to see. This one was much more difficult for me to read than this one. I do wear glasses, however.

. . .

THE COURT: Did you also say that you found the card that has the boldface print and that was in caps was more difficult to read than the other one?

THE WITNESS: This has been proved in research studies that it is more difficult for people to read writing in all caps than it is when you use caps and small letters.

THE COURT: Which card contained all caps?

THE WITNESS: The orange card contains all caps.

THE COURT: All right.

. . .

[48] *Redirect Examination by Mr. Hitov*

Q. Who else besides educational publishers use readability studies? A. Readability studies are used by a great number of people.

. . .

A. As I said earlier, in business and in industry, and I think the State of Connecticut is using it on insurance policies.

Q. Ms. Janos called your attention to the chart, Plaintiff's Exhibit 17. I am not sure what that chart does show. Did you mention a number of 82.2%? A. This shows that 82.2% are high school graduates and that 45.8, and this is cumulative, have completed nine through the eleventh grade of high school and 14.8 have completed eight grades.

Would you repeat the question?

Q. No, that's all right. That is what I was getting at. It just left me a little bit confused. If that is correct then more people have graduated from high school.

. . .

[49] Q. Doctor Conard, if I were to tell you unequivocally that someone understood every word in a given passage would that necessarily mean that that person understood the passage? A. No, it wouldn't.

Q. If I gave you a sample of three, if I told you that three people understood every word in a given passage, could you reliably extrapolate that to a universe of 16,000? A. I would not think so.

Q. However, if you gave me the results of a reading test, the Dale-Chall Test, for example, or the Fry Test, or the Flesh Test, on a given sampling, could you reliably extrapolate that to a universe that size? A. Yes.

. . .

[52]

HARRY KREIDE

Direct Examination by Mr. Rae

Q. Would you state your name and address, please? A. I am Harry Kreide.

. . .

Q. Who do you work for? A. I work for the Bureau of Systems Operations which is part of the Office of Management Information Systems, and that is under Administration and Finance for the Commonwealth of Massachusetts.

Q. What is your job? A. Deputy Director.

Q. Deputy Director of the Bureau of Systems Operations? A. Correct.

Q. How long have you been employed in that capacity? A. Since the Bureau was formed in 1979.

Q. Before that where did you work? A. Prior to that the organization that it was merged with, what is now the Bureau of Systems Operations, was called the Office of Management

Systems. That was part of the Department of Public Welfare at that time.

[53] Q. Was that the Division of Public Welfare that dealt with the Department's computer systems? A. I don't understand.

Q. Was the Office of Management Systems a section of the Department of Public Welfare? A. Yes, it was.

Q. Can you describe the relationship between the Bureau of Systems Operations and the Department of Public Welfare? A. The Bureau of Systems Operations provides the systems and operations for nearly all of the automated systems that are brought in the State for the Department of Public Welfare.

Q. And that would include the computer operations for the Department? A. The computer operation and all of the programming.

Q. How large is the Bureau of Systems Operations' staff? A. The current size is approximately 315 people.

Q. How many of those are computer programmers, approximately? A. The number of programmers and analysts combined is in the order of 75 or 80.

Q. Is it safe to assume these computer programmers and analysts are competent? A. Are which?

Q. Are competent. [54] A. Yes.

THE COURT: Are you implying that any employee of the Commonwealth of Massachusetts is not?

MR. RAE: No, I am not. I am implying that they are.

Q. That would be true with respect to the programmers and analysts on your staff during the months of October, November and December of 1981? A. Yes.

Q. What computer, the make and model number, do you use for the majority of your work for the Department of Public Welfare? A. Currently or at that time?

Q. In November and December of 1981. A. Most of the production work was done on the IBM 371/48 at that time.

Q. Has there been a change in the hardware since then?
 A. We have added additional equipment since then and most of that work is done currently on the IBM 3033.

Q. Back in November and December did you use the IBM 370, Model 148, to generate Food Stamp authorizations to participate? A. Yes.

Q. Those are generally referred to as ATP's? A. Correct.
 [55] Q. Did you use that computer to generate the 902C Report of November 25, 1981? A. Yes.

Q. Did you use that computer to generate the address slips for the general notice of the change in the earned income disregard that went out in late November, 1981? A. Yes.

Q. Does your IBM 370, Model 148, have a full complement of disc and tape drives? A. Yes.

Q. Would you say those are the latest versions of what IBM offers? A. Yes.

Q. What type of printer does that computer have? A. A 3211 and a 1403.

Q. What computer language or languages are used with respect to the Food Stamp Program? A. Most of the programs are written in COBOL.

Q. And that would include the program for generating the address labels? A. Yes.

Q. Would it be fair to say that you have a good working knowledge of the Department of Welfare's computer system and programs as they relate to the Food Stamp Program?

* * *

[56] Q. Do you have a good working knowledge of the computer hardware and programs which are used with respect to the reports, the issuance of Notices, and the issuance of Food Stamp ATP's? A. Yes.

Q. Are you familiar with the monthly income reporting system? A. Yes.

Q. Am I correct that the monthly income reporting system is a system whereby certain AFDC households with earned in-

come file monthly reports with the Department of Public Welfare verifying their continuing eligibility for assistance? [57] A. Yes.

Q. In October and November and December of 1981, did the Department of Public Welfare have a separate computer system not operated by the Bureau of Systems Operations into which they entered data collected from the monthly income reports for those households then participating in the monthly income reporting system? A. I am afraid I don't follow you.

Q. In October, November and December of 1981, did the Department of Public Welfare have a separate computer system not operated by the Bureau of Systems Operations? A. That is correct.

Q. It was into that system that the initial data entry for the households participating in the monthly income reporting system on line entry into the computer was done, not into BSO's computer but into the monthly income reporting system? A. For the three pilot offices that were on the system at the time.

Q. For those households that were participating? A. That is correct.

Q. Isn't it true that some of the households in that, the acronym is MIRS, MIRS System, isn't it true that some of those households also received Food Stamps? A. Correct.

[58] Q. Does the MIRS Computer System issue Food Stamp ATP's? A. It does not issue ATP's, no.

Q. That is the computer system which the Bureau of Systems Operations runs that issues ATP's? A. Correct.

Q. Isn't it true that the Bureau of Systems Operations computer gets the raw data upon which the BSO computer relies to generate Food Stamp ATP's from a magnetic tape generated by the MIRS computer to those households which are participating in MIRS and receives Food Stamps?

* * *

A. Unless you made a misstatement. It sounds as though you said the BSO computer was feeding the wrong tape to the BSO computer.

Q. I apologize. It would be the MIRS computer generating a magnetic tape which would then fit into the BSO computer? A. That's correct.

Q. So the BSO computer, which issues the Food Stamp authorization to participate, gets the information from the MIRS computer for those households in MIRS? A. Did you say does the BSO computer receive the raw information from the MIRS computer for Food Stamp [59] information?

Q. The raw information which enables the BSO computer to issue Food Stamps to those households. A. If that is what you said, that is correct.

Q. Isn't it true that if there was a bottleneck in the MIRS data entry system the Food Stamp ATP's for those households participating in the MIRS system would be based upon stale data? A. If you are saying if the MIRS system did not update the information on the master file for some reason, that is true. That would be true in any situation. It would issue it on the basis of whatever is the current information.

THE COURT: Is that what you meant by the bottleneck?

MR. RAE: That is correct.

Q. And if the ATP's were issued based upon stale data the likelihood of error in those Food Stamp ATP's would be substantially increased; is that correct? A. Not necessarily.

Q. But the likelihood of error? A. What is your definition of error?

Q. The likelihood that Food Stamp households would be receiving an incorrect amount of Food Stamps. A. If, in fact, there was a failure to update a case [60] on a timely basis and it was, in fact, entitled to a different amount than what it was currently receiving then there would be an error.

THE COURT: What is the relevancy of this line of testimony as to computer output within the Department in the advocacy of the Notices?

MR. RAE: Your Honor, this goes to the likelihood of error in the receipt of benefits which ties in directly to the adequacy of the Notice.

If the Notice does not contain information sufficient for a household to determine whether there is an error, and in fact, there are rampant errors in the issuance then the necessity for a good Notice becomes much more imperative.

THE COURT: All right.

Q. When was the Bureau of Systems Operations asked by the Department of Public Welfare to modify their computer programs to implement the change in the earned income disregard? A. The formal written request for the change was received by us on October 29, 1981. There had been significant discussion of it prior to that.

Q. What specifically did the Department of Public Welfare ask the Bureau of Systems Operations to do with respect to the earned income disregard change? [61] A. Basically, we were asked to modify all of the maintenance programs in which the earned income disregard was used so that it reflected the current amounts and to implement that effective with the December ATP's.

Also, we were asked to issue two different Notices, one to the population which would no longer be eligible because of the 130 percent cap on earned income, and another Notice to those who were either closed or reduced due to the reduction from 20 to 18%.

Q. This case simply involves the earned income disregard for the 130 percent cap? A. Well, it was all part of one change.

Q. Was the Bureau of Systems Operations given a deadline to complete this job? A. It was to be effective with the December ATP's which meant that the Notices would have to

go out by the 20th of November or earlier in order to have adequate notice and the actual change in the amounts to the master file would have to be done by the 23rd of November in order for it to become effective by the cutoff date. That was the cutoff date for that month.

Q. As far as the programming task did the Bureau of Systems Operations have to generate a program or modify an existing program to generate a set of address slips for each household affected by the income disregard change?
[62] A. Would you repeat the question?

Q. As part of the programming task did the Bureau of Systems Operations have to generate a program or modify an existing program to generate a set of address slips for each household affected by the earned income disregard change?

A. We were asked to make some changes in the existing format used for name and address notices. That was a slight change from what we had before.

Q. Is some programming also required to ensure that the computer generates address slips solely for a discrete set of households, those affected by the earned income disregard change? A. In every case when we generate name and address cards it is almost inevitably a unique situation. There is a certain population that is going to receive notices or a different kind of notice. As I said a moment ago, we sent a different insert to the ones who had been terminated because of the 130 percent cap.

Almost invariably in one of these mass changes there is a uniqueness in one or more of the sub-population of the total.

Q. And that uniqueness requires programming? A. Yes, correct.

Q. Did the Department of Public Welfare ask the Bureau of [63] Systems Operations to include these labels on the Notices or on any other document being sent to the households affected by the earned income disregard change, any individual information about that household change in Food

Stamp benefits amount? A. (inaudible to this reporter)

* * *

Q. Isn't it true that if the Department of Public Welfare had indicated in its formal written request to the Bureau of Systems Operations that it wanted the BSO to program the computer to include on the address label the affected household's old benefit amount, the new benefit amount and the earned income amount BSO would have been able to program the computer to do so without causing any delay in the date by which the earned income disregard changes became operational or in the date by which the Notices informing the affected households of the change were mailed out?

[64] THE COURT: Could you have done it by November 20th or earlier, to get it out to the recipients?

* * *

THE WITNESS: Can we be clear what are the initial things you are asking for, if they had been asked for?

Q. The three additional things would be in the upper right hand corner of the address slip the old benefit amount, [65] the new benefit amount and the household earned income amount? A. The answer is yes.

Q. Thank you.

In December of 1981, did you receive a request from the Department of Public Welfare to program the computer to generate supplemental ATP's to a class of recipients affected by the earned income disregard reinstating the benefits that had been taken away from them in early December? A. Yes.

Q. When did you receive that request? A. The request was not actually received formally by BSO until January 4, 1982. It was dated the 18th of December and it was done on a rush basis. So in effect we were working on it parallel with the processing of the request.

THE COURT: You are saying that you started working toward it before you received the formal request?

THE WITNESS: The request was written on the 18th. I am sure we had a copy of the draft of it at that time.

Q. Would it be fair to say that December 18th was the date of the request for all practical purposes? A. Yes, because on the 19th of December an individual [66] worked overtime specifically on that, so it was clearly in the works then.

Q. When was that programming effort completed? A. On the 28th of December when the supplemental ATP's were sent out.

Q. Isn't it true that supplemental ATP's for the closed cases went out on December 23, 1981? A. That is possible but the work was not completed until December 28th, all the work involved.

Q. As part of the Department of Public Welfare's request to issue the supplemental ATP's did they also ask you to generate a set of address slips for the new Notice that was going to be sent to those households receiving supplemental ATP's? A. Yes.

Q. Did the Department ask you to include on that address slip the household's old benefit amount, the new benefit amount and the amount of earned income? A. No.

* * *

MR. RAE: I would like to make an offer of proof with respect to the last question.

The witness, if allowed to answer, would have testified that it would not have caused any delay in the mailing of the Notices.

THE COURT: All right.

* * *

Cross Examination by Ms. Janos

XQ. Mr. Kreide, you stated that the Bureau of Systems Operations is part of the Office of Administration and Finance; is that correct? A. Correct.

XQ. And you have testified as to what your relationship is

with the Department of Public Welfare. Could you tell us if the Bureau of Systems Operations does systems and [68] computer work for other State agencies? A. We serve approximately 40-odd agencies at the present time. The Department of Public Welfare represents about 50% of our work in fiscal '82.

XQ. What is the bulk of the work you do for the Department of Public Welfare, the day-to-day routine work?

* * *

A. There are three major applications that are supported for the Department of Public Welfare, the vendor payment system, the Medicaid Program. In other words, the child support system, and a variety of recipient systems that provide cash assistance, Food Stamp benefits and the like. The day-to-day thing is -- well, typically, there are anywhere from 10 to 20 requests received every week from the Department of Public Welfare to do special reports, to make changes, and to do a variety of things.

XQ. Does BSO generate the checks that go out for the public assistance program on a routine basis as well?

MR. RAE: Objection, your Honor. The checks in public assistance programs have nothing to do with this case.

THE COURT: Well, if the questions are related [69] to the ability of the Department, which is headed by this witness, then I am going to retract my earlier objection and allow the offer of proof as to the abilities to put in the Notice what was asked originally, and if your offer of proof is correct then the answer will stand as evidence. You will be allowed to cross examine on that point if you wish.

MS. JANOS: I would prefer that the witness be asked that question and be allowed to answer.

THE COURT: I will allow it in evidence. Why don't you put the question directly to him?

MS. JANOS: I believe the question stated by Mr. Rae was with respect to the supplemental ATP request on or

around December 18, 1981, would the Bureau of Systems Operations, if they had been requested by the Department, would they have been able to issue a name and address card containing old benefits amounts, and new benefits amounts, and the earned income category when the supplemental ATP's were issued at the end of the month?

. . .

A. Probably we could have, yes.

[70] XQ. Could you tell me, Mr. Kreide, the nature of the changes in more detail that were requested by the Department of you on October 27, 1981? A. The changes for the earned income disregard?

XQ. Yes. A. Basically, it involved modification of all the programs or a significant number of the programs that maintained the master file, the master file that provides benefits not only for Food Stamps but eligibility for Medicaid, for AFDC payments, for General Relief payments, for the Refugee Program. The same master file serves all of those programs. It is a system that has been around for a good many years.

Everytime we go in to make a change we do it with a certain amount of trepidation and care, and even though a change may be small, and this change we made in October and November was not small, but nevertheless it was not a large change. It still required the time and the effort to test everything before we actually allowed the ATP's that were generated for December to be generated.

XQ. When you are given a request by the Department of Public Welfare, can you tell me how, generally, a typical or, in fact, this particular system request was handled from start to finish by the Bureau?

[71] MR. RAE: May we clarify whether he is speaking with respect to this specific request or in general? If it is this specific request I would have no objection.

XQ. If you can, would you relate it to this specific request? A. This particular request — every request that in-

volves a change of a large number of cases is not going to be typical in that it has its own peculiar requirements.

This particular request had been one that we had talked about for a couple of months before, but was part of an effort to delay implementing the change as long as we could because the people who were responsible for this work were fully committed to at least three other major changes that were going on at the time, all of them around the new regulations for AFDC and for Food Stamps.

We were making changes for the earned income cases for AFDC, implementing new regulations for Food Stamps and also putting in an automated system for the elderly and disabled on SSI to receive Food Stamps.

All this was going on during September, October and November, and therefore, it was the wish of the Department of Public Welfare not only because of the impact upon us but also upon them to delay implementing this [72] particular change as long as we could, and so had been discussed during the months of September and October, and finally when it was known that we could not put it off any longer than the December ATP the request was formalized and given to us around the end of October.

Typically, what happens when a request is received — there will be questions that have to be answered. They are not always clear or specific enough as to what the change is.

There may be a lapse of a week to ten days before we have a firm set of instructions that we can give to an analyst or a programmer.

And then typically, depending upon their workload, if it is a small change that should be done in about a period of a week to ten days.

This particular change was not what I would call a small change, not because of the notification that was sent to Food Stamp recipients or the information on that card, but because of the change to the program that maintain the master file. That is where the significant change occurred.

XQ. What sort of things are you referring to? A. The portion of the program that does the calculation of Food Stamp benefits and validates the amount the worker has put in are correct. That is a portion that [73] had to change.

So continuing on, after the programmer has made his changes in the program or programs, he then has to test that and that will involve anywhere from, for a small change, a week to ten days to test it out and make sure that it is accurate using test data and using a test file in order to verify it.

And then when everyone is satisfied and the Department of Public Welfare is satisfied, and they sign off that it is acceptable then we implement it.

XQ. Did you have any problems during November of 1981 with the availability of computer programmers for this particular program?

. . .

A. We were very tight, yes. We were saturated with the work that was involved in the three major projects that were going on at the time, and it is typically the same individuals that have to make these changes that are familiar with these programs, and so we were not exactly plush.

In fact, we had a number of people that had left the organization between September and October, that were not replaced for some months.

XQ. Were there any particular problems with the individual [74] who was most familiar with the Food Stamp Program? A. I'm afraid I don't follow you.

XQ. Are you familiar with an employee by the name of Mr. Cardella? A. Yes.

XQ. What was Mr. Cardella's position in the Bureau? A. At the time he was suffering from a severe illness which took his life the following year, and he had not shared with us fully what his condition was at the time, but it soon became evident that he was suffering from a terminal illness and was in treatment for it.

XQ. What was his responsibility? A. His responsibility was for the maintenance of what we call the file maintenance programs, the main programs that maintain the master file, the most critical part of the system.

XQ. Was his input necessary to make the changes that had to be done, the file changes that had to be done to implement the changes? A. Yes.

XQ. Do you recall whether or not the bureau had issued for several years what is called a FROM TO Notice on a master change before? A. I don't recall. We had done it before but I am advised by one of our programmers that we have done it [75] in the past for increase situations.

XQ. Have you since been requested by the Department of Public Welfare to reprogram your computer if-you-will to issue FROM TO Notices on mass change cards? A. Yes.

XQ. Can you estimate for us approximately the length of time it took to make the changes that were required in order to issue a FROM TO Notice?

* * *

A. We did have a specific request to generate a TO FROM Notice and by that I mean stating the old benefit amount, and the new benefit amount, as a result of the AFDC cost-of-living increase, which, in turn, caused a decrease in the Food Stamp benefits, and that request was [76] received on June 28th, and completed, done, sent out, effective for September, on August 24th, a lapsed time of almost two months.

I might point out again that the generation of the Notice is not the problem but again it is a mass change and it was all of the changes associated with the master file change that took up the majority of that time.

THE COURT: Were the Notices that are the subject of this inquiry, the orange and yellow cards, printed by your computer?

THE WITNESS: Yes.

THE COURT: How long did it actually take to turn

those out? How long did it take to put the second Notice out after the Court's order?

THE WITNESS: My difficulty in answering that, your Honor, I do not have a way to really separate out that element of time because it was a part of the total change that was done.

The programmer who made the changes to the program that generated that Notice told me that it only took him a few hours to make the change.

THE COURT: As I understand it, the problem was not so much putting out the card as it was making the change in the master program.

THE WITNESS: That's correct.

[77] XQ. Part of the problem was not so much the issuance of the final Notice but the work that led up to it, to the final issuance of the Notice? A. Correct. Unless you frame for me what is the specific mass change that is going to be done and, therefore, the Notice to go with it it is difficult to tell you what the total time is going to be.

The Notice part of it is going to be small. That is not a big thing provided you don't ask me to put more information on the card than there is room for and as long as it is information that is available in the file. That is not a problem.

XQ. In terms of the information that is available on the file and the currentness of the information, how much lead time do you need so the Notice itself would be current or contain current information? A. Again, it would depend upon the nature of the change but even with a small change we insist upon a lead time of at least a month because of the steps we go through that I described earlier.

Even if it is just one change in a statement in the program we need that lead time to test it out because if it is wrong it affects tens of thousands or maybe one hundred thousand cases.

THE COURT: What determines the type of face
[78] that the card will contain, the actual print size?

THE WITNESS: If I understand you correctly, your Honor, you are asking me what determines —

THE COURT: The size of the type.

THE WITNESS: The size of the type? Basically, the print part that our printer puts there. It has generally been pica type, meaning it is 10 to the inch and spaced vertically about six to the inch.

XQ. Mr. Kreide, the Bureau computer does not issue these Notices themselves in the sense that they do not type them up, is that correct? A. Those are preprinted inserts that go with the Notice, yes.

XQ. And the Notices that the Bureau prints is a piece of paper or whatever, that comes off the computer? A. Do you want to use this as an example?

XQ. No, that is all right.

MR. RAE: Your Honor, I believe annexed to the deposition of John Cassedy is a copy of the address label which Mr. Kreide has been referring to as the Notice. Mr. Cassedy's deposition is in evidence so that that is available to the Court.

THE COURT: All right.

XQ. The particular card or Notice that the computer issues, is there any flexibility within that computer to change [79] the type and size of the information that is printed out by the computer?

. . .

A. The printer that we used at that time for the Notices that were printed in November and December of 1981, were printed with either the IBM 1403 or the 3211, which has very little flexibility as far as what we call the print font is concerned.

We also have another printer, the IBM 3800, which is a lazer and gives us a lot more flexibility in what we can print.

If somebody said to us, "We want to print not just upper case but lower case and other characters," it would [80] become a task to program that particular application using the 3800 printer.

XQ. I have one final question, Mr. Kreide. On the supplemental ATP's that were issued as a result of this lawsuit last December, did the request that you implemented — was that kind of request that was implemented in the normal course the way you would implement any request from the Department or any agency? A. The one received in December?

XQ. Yes. A. I wouldn't call it normal. It was one of those prize cases, you know, "Get it done. It's got to be done by the end of December. Do whatever you have to do to get it done. Put other work to one side."

XQ. Was it tested the way you would normally test a program change? A. No, hopefully not.

THE COURT: I don't believe I understand the question or the answer. What do you mean by "hopefully not"?

Ms. JANOS: I believe that Mr. Kreide earlier testified that when he handled a system request that there is production involved in it and in implementing a change there are certain tests made on the program and on the implementation of the program to see if it is [81] correct and it works.

I believe he testified that that is what the Bureau does in the normal course.

THE WITNESS: We had to shorten that entire time frame in order to get it done by that time and it is not what you like to do normally because you are taking risks.

We could easily have sent out the wrong amounts if we made a mistake and then we would have had to go through another effort to correct whatever error we had made.

. . .

Redirect Examination by Mr. Rae

Q. You testified concerning master changes. Is it your testimony that the issuance of Notices is a small portion of a master change and it is the changes to the master file that are most significant? A. That is correct.

Q. It is the changes to the master file that take the major

part of the time and it is the changes to the master file also that results in the actual changes in the checks or in Food Stamps in the ATP's? [82] A. More specifically the changes to the programs that are going to affect the master file. Those are the ones that take the time.

Q. Those are different than the programs that would be necessary for a Notice? A. Correct.

Q. The Notice programs are much simpler? A. That's correct.

. . .

Re cross Examination by Ms. Janos

XQ. If the master file is not changed properly would that affect the information that is printed out on a name and address card, if you were to print it out to the recipients, the specific information on a name and address card? A. Absolutely.

XQ. So it is important that the master file changes be done properly and within enough time? A. Yes.

. . .

[86]

THOMAS E. CULLERTON

Direct Examination by Ms. Janos

Q. Would you please state your name? A. Thomas E. Cullerton.

Q. What is your address? A. Boston University, School of Education, 605 Commonwealth Avenue, Boston.

Q. What is your position at Boston University, Doctor? A. I am Professor of Education.

Q. Would you state your educational background to the Court? A. Yes. I earned my Bachelor's, Master's and [87] Doctorate at Boston University.

Q. And your degrees are in what field? A. Elementary Education, reading and measurement.

Q. And your Doctorate is in what field? A. In the field of reading and measurement.

Q. Can you give us a brief summary of your professional background? A. I was employed in the Lynn Public Schools as an elementary school teacher. Upon completion of my Doctorate at Boston University I taught at the University of Illinois for three years and I have been at Boston University for 18 years.

Q. What types of positions have you held at Boston University for the last 18 years? A. I came back to Boston University as an Associate Professor. I am now a full Professor. I have been the Chairman of the Division of Reading —

MR. HITOV: Your Honor, we will waive the reading of the qualifications of the doctor.

THE COURT: Very well.

Q. Doctor, you heard the testimony this morning. And I won't ask you to go into detail but can you tell the Court what are reading tests generally or readability tests generally?

A. Well, reading tests are available to generally [88] evaluate material on the basis of vocabulary and sentences. Some also evaluate difficulty of material in terms of the number of syllables. They do not take into consideration concepts or ideas.

Q. Doctor Cullerton, I want to show you two cards, which are marked as Plaintiffs' Exhibit 2. There are two pages of them. Can you tell me if you have seen these two cards before? A. Yes, I have.

Q. Did you see them in response to a request that I made of you that you look at them and analyze them? A. Yes.

Q. Did you do a reading analysis of those cards? A. Yes, I did.

Q. Did you do the cards separately or together? A. I did each one separately.

Q. And what standard reading test did you use? A. The Dale-Chall.

Q. Could you tell us what samples you used and what the test results were on Page 2, the orange card, Exhibit 2?

A. On the orange card, the first sample started with "Recent Changes" and ended with "top of this page", a sample of 137 words, and the level of difficulty came out to the 10th Grade.

The second sample started with "you may still" and [89] ended with "of Food Stamps", a sample of 120 words, and the level of difficulty was the 9th Grade.

Q. Did you also analyze the yellow card? A. Yes, I did.

Q. What were your results on the yellow card? A. The first sample began with "if you received" and ended with "changes", a sample of 107 words, and it came out that the level of difficulty was the 10th Grade.

The second sample is "if you did not" and ended with "top of this page", a sample of 116 words, and the difficulty level was the 9th Grade.

The third sample was "a change in" and ended with "to be recertified", a sample of 115 words, and the level of difficulty was the 8th Grade.

Q. Doctor, in your sample for the orange card, your sample #1, in determining the level of difficulty did you have to determine which words were so-called unfamiliar words according to the Dale-Chall Test? A. Yes.

Q. Could you read to the Court that list of words that you determined were unfamiliar according to the Dale-Chall Test?

A. The words were within, division, recent, accordance, federal, deduction, benefits, percent, reduction, portion, determining, eligibility, benefit, results, federal, [90] benefits, reduced, eligible, benefits, terminated, request, disagree, action, requesting, benefits, reinstated, current, and appeal.

Q. Doctor, I note that you read the word "benefits" three or four times? A. Yes.

Q. How does that relate to this matter? A. According to the Dale-Chall each time you encounter a word, if it is not on

the Dale-Chall list of 3,000 familiar words, it is considered unfamiliar.

Q. Doctor, did you also make a list of the words that were unfamiliar on the other card? A. Yes.

Q. Did you also make a list of the unfamiliar words on the three samples on the yellow card? A. Right.

* * *

Q. Doctor, I show you this report. Can you tell me what it is? A. It is a report on the readability of the two cards.

[91] Q. What does the report contain? A. It contains the number of word samples, the number of sentences sampled, the number of unfamiliar words, the average sentence length, the raw score.

Q. And that is for both cards? A. Yes.

MS. JANOS: I would like to offer Doctor Cullerton's results into evidence.

THE COURT: It may be allowed.

(Report of Dr. Cullerton marked Defendant' Exhibit I and received in evidence.)

Q. Did you examine these two cards using any other standard readability tests? A. Yes, I did.

Q. What were those tests that you used? A. I used the Fog Formula.

Q. What does the Fog Formula require you to do? A. You count the number of words, the number of sentences and the number of words of more than three syllables.

Q. What was the result of your test using the Fog Formula? A. On the orange card, the grade level—I did one sample and the grade level came up to 14.4, and on the yellow card it came to 15.2.

Q. Doctor Cullerton, did you use the Fry Test in analyzing [92] these cards? A. I did but I do not have it with me. It was roughly the same but it was higher than the Dale-Chall.

Q. Doctor, can you account for the difference in your test results between the Dale-Chall test and the Fog Test?

A. Yes, the Dale-Chall—the reason I used the Dale-Chall is the formula is the formula that is used by most publishing companies to determine the level of difficulty of the textbooks. It is also the formula that is used by testing companies generally. We believe it is a more accurate formula. It takes longer to administer. The Fog and several other formulas are quicker, and ordinarily a person would use them—not if they were going to be using the material for teaching but just wanted to have a rough estimate.

Q. And that would account for the variations? A. Yes.

Q. In your opinion, Doctor, is one card enough of a sample in order to do an accurate readability test using the formula that you have used? A. In terms of these, I think we have a fairly accurate estimate of two different samples of one card and three of the other card. Ordinarily, when using material to determine readability for something that is going to be used over a long period of time we would want a [93] number of instances and we would want them spread out.

Q. Assume for the moment that the reader of those cards was familiar with all the words that you listed as familiar, and understood the meaning of each of the words, and understood the concept behind each word, would that affect your opinion as to your test results in terms of the grade level? A. Yes. I think one of the things that needs to be done along with the application of the formula is you need a personal judgment in terms of how familiar the people are with the words, how often they have encountered them. It was mentioned earlier that the number of concepts—well, people ordinarily know more than these formulas would indicate.

Basically, we use a list of words that are known by children in the fourth grade, and many of these words would be words that would be common even though they would not be known necessarily by the youngster in the Fourth Grade.

Q. Doctor, I show you Defendant's Exhibit B and it is entitled Affidavit of Gill Parker, and I ask you, Doctor, if you examined any samples from that text? A. Yes, I did.

Q. Would you tell me what test you used and what your results were? [94] A. I used the Dale-Chall Readability Formula, and the sample started with #3, "We have been and it ended with "could appeal". The sample was 106 words. There were 15 sentences. There were 17 words not on the list, and the reading level was about 9th Grade.

Q. Doctor, did you also use the Fog Test in analyzing the readability of that affidavit? A. Yes, I did.

Q. And what were the results of your using the Fog Test? A. It came out to the 14th Grade.

Q. Doctor, I show you Defendant's Exhibit E, The Affidavit of Cecilia Johnson, and I ask you whether you analyzed that affidavit using a standard readability test? A. Yes, I did.

Q. What test did you use? A. I used the Dale-Chall.

Q. Could you give me your results using the Dale-Chall Test? A. Yes. I took three samples. The first one was "I work as a" and ended with "reduced or terminated". It was a sample of 123 words, 7 sentences, and the material placed it at the 9th Grade level.

The second sample was "the Notice went on" and it ended with "had been reduced". There were 117 words, five sentences, and the level of difficulty was the 8th Grade.

[95] The third sample was "I asked Barbara" and it ended with "Every dollar counts".

It was a sample of 114 words, 9 sentences, and the grade level was 8th Grade.

Q. Did you use any other test in examining that affidavit? A. Yes, I did.

Q. What test was that? A. I used the Fog Formula.

I sampled just one sample of 123 words, 7 sentences, and the level of difficulty was 12th Grade.

THE COURT: Were you present when Doctor Conard spoke earlier today?

THE WITNESS: No, I wasn't.

THE COURT: Did you have any trouble reading, and I am not talking about readability, I am talking about reading the actual cards themselves, the type face on them?

THE WITNESS: No. I can tell you that the type face is difficult. Capital letters are harder to understand and harder to read. I think that the kind of paper and the color may be what make it difficult.

THE COURT: Did you have to use a magnifying glass?

THE WITNESS: No, I did not.

Q. Doctor, I have one more question. Why is readability so [96] important when you are looking to determine comprehension? A. Well, if you have to concentrate on trying to read material, you want to concentrate on what you are reading and this does make it difficult.

Q. Is legibility more important in certain types of tests as opposed to other tests or certain kinds of reading? A. I think it is important. I think that youngsters oftentimes are able to adapt to material much more readily than adults. I think ideally we should put material in the hands of people that are easy to read in terms of legibility so they can concentrate on what they are reading.

Q. Does the length of the material have anything to do with legibility? A. Yes, absolutely. Length does and spacing does, all of these things do play a part in legibility. Color of ink, color of paper.

Q. Is legibility more important when you are dealing with a larger reading sample, a book, if-you-will? A. Yes, because of fatigue.

Q. In what respect? A. If the material is hard to read they may, you know, if they don't have to read it, will just give up, whereas if it is material that is relatively short, I find that [97] people are more willing to read it.

THE COURT: Unwilling to read it?

THE WITNESS: No, they are willing—if it is something they need.

THE COURT: What about the subject matter itself? What if the title reads "Reduction or Termination of Benefits"? Wouldn't that strike home?

Wouldn't a person be more willing to read it than not?

THE WITNESS: Yes.

THE COURT: Under those circumstances is your opinion changed as to the readability of the contents within those cards?

THE WITNESS: I think, yes.

THE COURT: In what way?

THE WITNESS: If it is something that is sent to me, and I was going to have to read it, and I thought that it was something that was going to affect me in some way, I would read it.

THE COURT: In other words, if you got a notice from Boston University, for example, that your salary was reduced \$10,000.00, you would read it?

THE WITNESS: Yes, I would.

. . .

[98] Q. Doctor, if something is not completely understood on the first reading, would a subsequent reading make any difference? A. Yes. Sometimes if material is difficult to read and a person had difficulty reading it oftentimes on the second or the third reading they can begin to fill in with words that may not have expressed concepts before. Yes, I would say so.

. . .

Cross Examination by Mr. Hitov

XQ. Am I correct that your testimony was that on the yellow or the gold cards there were three samples, on the Dale-Chall? A. On the orange colored card—I did two on the yellow colored card.

XQ. Doctor Cullerton, these tests that you ran were the Fog Test and the Dale-Chall Test, and I believe you also said that you ran the Fry Test? A. The test is close to the Fog.

[99] XQ. Are these quantitative tests or statistical tests? A. They are more statistical. They take into consideration the number of words in the sample, the sentence length, and the number of unfamiliar words in terms of the Dale-Chall.

In terms of the Fog it is the number of words with more than three syllables. It is the number of words but the number of words with more than three syllables.

XQ. If you had three syllables in one word that would be counted? A. Yes.

XQ. If you had six syllables that would be one word, that word would be counted? A. That's correct.

XQ. If you had six one syllable words? A. No.

XQ. What about the Fry Test? A. It is syllables also.

XQ. Are they or are they not related to each individual word? A. I can tell you in one second. The Fry takes into consideration syllables and the average number of sentences in a 100 word sample.

XQ. Are there any other aspects to a readability study or the determination of level that one would put into a test beyond this statistical counting and identifying? [100] A. Yes. I think that one ordinarily would take into consideration—I think the person has to read it and has to look at it to determine, in terms of concepts, whether the material can be understood or not.

XQ. Do you happen to know offhand the reading level of "To be or not to be. That is the question"? A. The First Grade, I think, the statement.

XQ. To be or not to be? A. Yes.

XQ. Would that, therefore, be recommended reading for a First Grader? A. No. That is where judgment has to come into it.

XQ. Exactly how much comprehension, if-you-will, do these statistical concepts, the statistical aspects of these tests, measure? A. None.

XQ. How does one determine the Dale-Chall relates to the First Grade level and the Fry relates to the First Grade level? A. They have established graphs. There is a graph here that is used to determine the reading level of the Fry Formula. The Dale-Chall has several computations that you should take into consideration and I can tell you basically what they are.

You count the number of words and you count the [101] number of sentences. You go through them to determine the number of words that are on the Dale list that are in the sample, and then you determine the average sentence length. Then you determine the Dale score, which is done by dividing the number of words not on the Dale list by the number of words in the sample, and then you multiply by 100.

And then you take the average sentence length and the Dale score and a number called the constant and you total these to come up with the figure that you then use. You use a table to convert to a reading level.

XQ. Did you use these tests, the Dale-Chall, the Fog, the Fry, in your work? A. I have used the Dale-Chall a great deal in determining the reading level of textbooks.

XQ. Why do you use the Dale-Chall? A. That is the formula that they request because they feel it is probably the most accurate.

XQ. I see. Do you feel it is the more accurate test? A. I think the Dale-Chall is probably the most accurate. I do think that you need to take a judgment into consideration.

XQ. When you administer the Dale-Chall test you follow the instructions that comes from Jeanne Chall and Doctor Dale? [102] A. Yes.

XQ. I take it that is because the test is designed to work with those directions and not with other corrections? A. That is correct.

XQ. So that to the extent that one is eliminating words from the Dale-Chall list of unfamiliar words, i.e., therefore adding words, isn't one fooling with the formula? A. I don't understand you, sir.

XQ. If one takes the word list on the Dale-Chall list and adds words to it, I can assume that these words, are not familiar words to a given audience? A. Oh, absolutely. The words on the Dale list are words that are determined to be known by children up to a grade four level. I am sure that there are some children at grade four that would not know those words and there are many other words that the children would know that are not on the list.

XQ. Presumably, that is taken into account in the statistical analysis that underlays the Dale-Chall Test? A. That's correct.

XQ. And that is the test that you just testified you believe is probably the most accurate of all the readability formulae? A. That is correct.

XQ. And that underlines the statistical foundation for the [103] test and one would be playing fast and loose to arbitrarily add words or delete words from the Dale-Chall list and that would no longer be the test that that test is based upon? A. That is correct. It is the Dale list.

XQ. You are correct. It is the Dale list.

* * *

[105]

JULES GODES

Direct Examination by Ms. Janos

Q. Would you state your name, please? A. Jules Godes.

Q. And where do you work? A. The Massachusetts Department of Public Welfare, 600 Washington Street, Boston, Mass.

* * *

Q. What is your present position with the Department of Public Welfare? A. I am the Director of the Procedures Unit.

Q. As Director of the Procedures Unit—well, strike that. Prior to being Director of the Procedures Unit what had been your position with the Department? A. I have been in the Department since 1965, starting as a social worker, and I have been a Field Representative at the Regional Office. I have been a Supervisor of Field Representatives in the Regional Office.

I have been a Project Manager for specific projects and Assistant Director for special assistance payments, responsible for policy and procedure. Since 1976, I have [106] been Director of a unit which at various times was responsible for either procedure or policy. There have been a number of shifts within the agency and my function—

THE COURT: Procedure concerning what?

THE WITNESS: The Unit develops procedures used by staff and local offices to carry out the different programs of the Department and how to carry out specific projects. A project we have been involved in is how to implement the Federal Regulations.

Q. How many people are in your Unit? A. 23 people are in the Unit, including myself.

Q. And what are some of the programs? A. Well, the Refugee Resettlement Program, AFDC, Aid to Families with Dependent Children, General Relief, Medical Assistance and Food Stamps.

Q. Can you tell the Court generally how you develop the procedures for a given project? A. It depends upon the nature of a particular project that you have to develop. If it is simply the Department issuing a new policy our responsibilities will be to review that policy, determine the policy, put that policy into different vehicles, such as handbooks or memos to staff.

Depending upon the nature of the policy, it may [107] require implementation or not.

Other items are special projects where you have to do something from beginning to end. It may or may not be related to a policy change.

Involved with that is an analysis of the policy, knowing what the policy is, deciding on the best way and method it will be presented to the field staff, speaking with the staff who are involved in the policy writing, drafting material, circulating material to other units within the Agency.

There are approximately 23 people on our distribution list for comments on material. We receive those comments back and incorporate them into a final document. Then we receive a final sign-off for the document based upon, depending upon the nature of the issue, whether it be our Legal Division, and ultimately, we have to submit it to the Office of Field Operations, which is responsible for the operations of all offices throughout the State.

Then sign-off on it. We then have to schedule the printing of it and ultimate distribution.

Q. Thank you. Can you tell the Court by whom the Food Stamp Program is administered? A. Well, the expense of the benefits are borne by the United States Department of Agriculture. The Department [108] of Public Welfare is the agency in the State responsible for the administration of it.

Within their regulations we have to develop our own regulations. We have to carry out that program, and so forth.

The costs of the benefits are borne 100% by the Federal Government. The costs of administration are shared 50-50 between the State and the Federal Government.

THE COURT: What about the problem of the public welfare employees working strictly in the Food Stamp area? Is their salary picked up by the Federal Government as well?

THE WITNESS: They pay 50 cents on the dollar. The State requests the Legislature for 100% of the cost and are reimbursed by the United States Department of Agriculture.

THE COURT: So, in effect, the Federal Government does pay 100%?

THE WITNESS: No. We pay 50% of the administrative costs, 50% of the salaries of employees who administer the program.

THE COURT: I thought you said you billed the Federal Government 100%?

THE WITNESS: No. We receive 100% of the administrative costs from the Legislature and bill the [109] Federal Government for 50% of it.

THE COURT: All right.

Q. Can you approximate how many households are on Food Stamps in Massachusetts?

MR. RAE: At this time?

MS. JANOS: Yes.

Q. If you can go back to 1981? A. The figures vary. The last figures I saw in the budget request said that during Fiscal Year 1982 the average number of households was about 170,000, and they expected a similar size case load during Fiscal 1983, that is, the State Fiscal Year.

Q. Can you approximate the number of households on Food Stamps that have what is called earned income? A. Again, from the same document, approximately 12% of the total number of Food Stamp households have earnings.

Q. What is earned income? A. Earned income is basically money which is received for performing a service as compared with unearned income which may have been for services performed a long time ago. Social Security would be unearned income. Welfare benefits would be unearned income.

Q. Can you tell the Court briefly how the Department determines whether or not a household is eligible for [110] Food Stamps, in other words, the criteria for eligibility?

* * *

A. There are two basic kinds of households that receive Food Stamps: public assistance households and non-public assistance households—households in which all members of the household—all people receiving Food Stamps are in receipt of AFDC or General Relief. Non-public assistance households consist of at least one member who is not in receipt of those benefits.

The non-public assistance households have to file an application for assistance and are interviewed by a worker, generally in the office, but if circumstances require it that interview will take place in their home.

During that interview process the worker is expected to inform the recipient about the program and their [111] rights and responsibilities. During the interview the worker and recipient complete the application form which asks information necessary to make a determination of eligibility. The factors that would have to be considered are such things as who in the household is receiving benefits, for whom are the benefits being requested, what is their income and what are their assets, how much money do they have in the bank, and also whether they have a new car or any property, etc cetera.

They are then asked to sign the form. The worker generally goes back to the office or to her desk, makes a decision on eligibility, determines their benefit level and generates a notice to the recipient telling him of the decision, as to whether their case has been approved or denied.

They also give them at the time a form which the recipient is expected to complete. If there are changes in income of more than \$25.00, changes in the household, changes in shelter expenses—these are all factors.

THE COURT: What you are saying is that of the 170,000 households in fiscal 1982 12% with earned income would be classified as non-public assistance households?

THE WITNESS: No. Non-public assistance households are approximately—of the 170,000, [112] approximately 70,000. It varies.

THE COURT: Of that amount 12% with earned income would be classified by that definition?

THE WITNESS: That 12% is of the entire 170,000. I don't know whether the 12% applies evenly.

THE COURT: Are you saying that you can have earned income and still be regarded as a public assistance household?

THE WITNESS: We have recipients who are on AFDC, who are working, and who are receiving both AFDC and Food Stamps.

THE COURT: All right.

Q. I show you an application for Food Stamps document and ask you if that is the application form to which you were just referring? A. Yes. This appears to be the application form. I believe it has been revised since January, 1980, but this is similar to the document we now use.

Q. I now ask you to look at a document entitled Change Report Form and ask you to describe what this is. A. This is the form that is given out at the time of the initial application. It is a form that the recipients are to report any changes in their circumstances of their household on.

Q. I show you this Notice of Eligibility Initial and [113] Recertification and I ask you to identify that document. A. This is a letter that the Department sends out to all NPA households at the point of their application or when they are recertified telling them the status of their case, the status of their application, and whether they have been approved or denied.

Q. Would you explain what certification means or recertification? A. Certification is the process of determining eligibility and is the process of obtaining verification and then making a judgment as to how much people should get if they are entitled to anything.

Q. What is the process? A. If they are a NPA household and they have been on the computer file approximately 45 days prior to the end of their defined certification NPA

households are given a particular period of eligibility.

Q. What is that period? A. It will vary anywhere from 1 to 12 months. The maximum is 12 months. The length of certification will depend upon the nature of the household. If it is a stable household they can get as many as 12 months. If it is a household that is subject to change, the loss of a job or starting back to work, for example, or they have been laid off but expect to go back to work, [114] the certification period would be as little as one month. The most they can get, it informs them, is 45 days prior to the end of their certification period, which right now is the last day of the calendar month, it informs them of the fact that the certification period is ending, and if they wish to continue to receive benefits they must come in and be recertified.

Q. What happens at the recertification? A. It is basically treated as if it was a new application. The process begins anew. They have to fill out a new ASPI application form. They have to submit the necessary documents and answer the necessary questions, and then the Department notifies them what the result of their action is.

Ms. JANOS: I would like to offer into evidence the application form, the Change Report Form and the Notice of Eligibility Form, to which the witness has referred.

* * *

[115-118] Q. Do you know what the Omnibus Reconciliation Act is? A. I do.

[119] Q. Do you know of the changes in the Omnibus Reconciliation Act that were required in the Food Stamp Program and what those changes were?

* * *

THE WITNESS: The Omnibus Reconciliation Act of 1981 required major changes in the Department's regulations and as such required major activities of staff in my unit in both the AFDC and the Food Stamp programs.

THE COURT: With particularity to the Food Stamp Program, how did it change your unit?

THE WITNESS: It changed the regulations that [120] ultimately generated the Notice which ultimately generated this court suit.

THE COURT: Did it change the Notice?

THE WITNESS: It required the issuance of a Notice. The Omnibus Reconciliation Act and the Food Stamp Program required the implementation of a number of new regulations, two of which we implemented utilizing the computer to calculate new benefit levels for recipients of Food Stamps, and we had to notify the recipients of that change, and that is why I am in Springfield today.

. . .

[122] THE COURT: I would be interested to know the [123] time span in which you were compelled to operate. How many employees were under your supervision?

THE WITNESS: At this point in time there were 22 under my supervision.

THE COURT: At that point in time, and I am talking about the fall of 1981.

THE WITNESS: Somewhat less than that, your Honor. I would say the number was around 18.

THE COURT: What was the time span of the edict before you? When did the Notices have to go out?

When did the recipients have to be informed of their benefits and their rights, their reductions, or whatever?

THE WITNESS: We received Federal regulations in September of 1981 informing us of changes that were to take place on October 1, 1981.

Those regulations also allowed the Department to request a waiver of the implementation, the time frame of those.

Towards the end of September the Agency requested a waiver.

. . .

I was involved in the waiver [124] process request and drafted the memos for the Deputy Commissioner at the time. We requested the Federal government waiver until January 1st for implementation for two factors—because of the fact that items having to do with AFDC as a result of the Omnibus Reconciliation Act and as a result of the fact that the Department was involved in a cash-in for SSI recipients who became eligible for Food Stamps on October 1, 1981. .

The Federal government said no to that initial waiver request and told us that we had to implement it.

. . .

. . . The Federal government in writing requested us or told us that we would have to implement it on November 1st. This was during the month of October.

We then followed it up with further correspondence to show the benefit of not doing it on November 1st and agreed that we would implement all portions of the Omnibus Reconciliation Act on December 1, 1981.

. . .

Q. Would you describe what it is that you and your Department did in order to implement the changes that were required?

[125] MR. RAE: Your Honor, I object again. Are we talking just about Food Stamp changes?

THE COURT: Yes, Food Stamps.

A. The first step in the process when the date was finally decided was to decide how we were going to do it, whether it was going to be a mass change or we were going to ask the computer to do it, whether we were going to have an individual case-by-case review, and the decision was to have the computer do it.

We had to analyze the policy. The first correspondence to the field staff was to tell them about the impending changes because any negative changes that were going to take place

after a particular date during the month of November had to be calculated using the new method.

A Systems Request had to be submitted, which was submitted at the end of October, requesting a readjustment of the system to do the new calculation, to put the new 130% limit on—the new 18% income reduction on.

We then had to explain that we needed Notices sent out to each of the affected cases.

We had to develop procedures which would describe those changes and tell them what their responsibility was in it.

[126] We had to prepare that material and distribute it. Staff members had to review the computer output, the involvement and testing of the data as it went into the file, and ultimately the production of the material for distribution to the field offices.

Q. I show you a series of what is entitled AP Memos and ask if you can tell the Court what those are. A. This is a memo that is sent to all case worker staff or financial assistance staff giving them specific instructions around the project. The AP/ADM are memoranda that are sent to the administrative staff through the level of supervisor, telling them what their responsibilities are.

Do you want me to describe each one of the five memos?

Q. No. But were those AP Memos that went out to the staff specifically relating to this particular project? A. The five AP Memos that I have in front of me were issued relating to the 12-1 changes and the intervention in this particular court suit and the action we had to take in regard to that.

Q. Did you or someone on your staff write those memos? A. Yes.

Q. Do you have there what is called an AP/ADM Memo? A. I have in front of me three AP/ADM Memos which were [127] also written in regard to this particular effort for the December 1st implementation and the reimplementation as a result of the actions taken in this court suit.

Q. I show you a document entitled State Letter No. 559 and ask if you can identify what that is? A. This is the State letter which transmits the policy in accordance with Chapter 30A of the Massachusetts General Laws regarding the Omnibus Reconciliation Act as it relates to Food Stamp holders.

* * *

Q. Mr. Godes, I show you what has been marked Plaintiffs' Exhibit 1 and Plaintiffs' Exhibit 2 and ask you if you recognize them? A. Do you want me to describe them?

[128] Q. No. A. Yes, I recognize them.

Q. Can you tell the Court as to Exhibit 1, the November, 1981, Notice, who wrote that Notice? A. The specific individual?

Q. Yes. A. William Christie.

Q. Is he in your Department? A. Yes.

Q. Can you tell the Court how that particular Notice was produced or run off if-you-will? A. The process we use is the secretary types the Notice on either a piece of paper or on a card and it is sent down to our print shop which uses offset printing to do the process.

THE COURT: Whose decision was it to use a card rather than a letter?

THE WITNESS: When we do mass mailings, your Honor, the system that we use is the computer produces an address card with the name and address of the recipient and a return address on it which is then put with whatever information we are sending and it is inserted in an envelope.

My understanding is we do not have equipment capable of inserting letters.

[129] THE COURT: Are you saying that all the Notices that go out from your Department go by way of cards?

THE WITNESS: All mass mailing Notices where we ask the system to generate a Notice is produced on card stock and approximately this size. It has to be very close to this size.

THE COURT: Whose decision was it to actually compose the form contained within the card, the actual composition?

THE WITNESS: The words?

THE COURT: Yes.

THE WITNESS: A staff member under my direction had to develop the Notice to communicate the change to the recipient, and did it utilizing previous Notices—cut and paste. The language regarding appeal hearings is basically the same language that we use on all similar Notices.

THE COURT: When the first Notice was enjoined by the Court who changed the composition of the verbiage contained within the second Notice that went out?

THE WITNESS: It was generally done by the Department's Legal Division.

THE COURT: Whose decision was it to change the [130] form of the caps that were employed?

THE WITNESS: Probably my secretary.

THE COURT: All right.

THE WITNESS: It was simply a typing issue that if—if items are going to be reduced they generally employ caps because it was felt that reduction would show off better.

Q. Were the changes in format any different on the first and second notices as it related to the method of the unearned income change? A. Between Change 2 of the December 26th Notice?

Q. Yes. A. No. Just to accommodate the fact that we were referring back to the first part.

Q. So that Page 2 of the second Notice is similar to the first Notice that went out? A. Very similar.

Q. In drafting Page 1 of that Notice what were you trying to communicate to the recipients? A. The attempt was to show that we were complying with the Court order in restoring benefits and how we were going to restore benefits and that, in fact, in January their benefits were again going to be reduced, and the fact that they did not have to appeal.

We tried to put in the fact that if they had [131] experienced a change of income of more than \$25.00 or less than \$25.00 it might be to their advantage to let us know, that they did not have to reappeal.

It was a matter of saying that—the first page was attempting to get a lot of information across to the recipient.

Q. Is that the kind of information that you normally send out in a mass change Notice? A. No. The information we send out in a mass change Notice is on—what is it? Plaintiffs' Exhibit 1 or what is Page 2 of #2.

Q. Does the format of the November Notice and Page 2 of the December Notice differ in any respects from the format that the Department has used in the past for mass change Notices?

. . .

A. No. They are basically the same format we have always used. It may vary slightly but not greatly.

Q. Approximately how many people received the November Notice? A. Approximately 19,000.

Q. Approximately how many people received the December Notice? [132] A. Something in excess of 16,000.

Q. Can you explain the difference between the two figures? A. The November Notice was sent to everyone who was on the file at the time of the select and the run.

A number of those cases that were on the file in November were up for recertification as of the end of November, and did not recertify or were determined ineligible for benefits in December, and when we went to run the same population in December those cases had already been terminated from the file and did not appear.

Q. Can you tell us what the 902 Report consists of? A. The 902 Report is a report produced by the computer—after it has done a series of calculations on cases—and it shows what has happened to the particular cases as a result of the calculations.

It is a positive action. Something has happened and it worked.

Whatever we wanted to do it happened and it appears on the 902.

Q. Are there different segments to the 902 Report? A. In December, 1981, or actually November, the report was produced in three parts.

Q. What were those parts? A. There was an error code A which was for cases that were terminated because their income exceeded 130% of the [133] standard, which is a new regulation.

There was the B report, which were cases which were recalculated and which experienced no change.

The third group was the cases with earned income or which experienced a change as a result of a recalculation.

Q. Did your unit have occasion to go through this run at some point and determine whether or not there were any errors on the 902 C Report? A. It was discovered after the fact, that there were cases that appeared on the 902 Report that were in error. There were household sizes 1 and 2 which were reduced below \$10.00, which is the minimum amount of benefits that a family that size should get.

There were cases that were given a bonus level of 1, 3 or \$5.00 and they are not able to obtain stamps in those figures. They should have been 2, 4 and 6.

There were other errors found on that report.

Q. Do you know the reason for those errors? A. No, I do not.

Q. What attempt has the Department made, do you know, to correct those errors? A. The Department went back in, when we discovered it, and requested, and had those errors corrected by the computer.

[134] Q. What effect did that have on the recipient's case file? A. They should not have received any loss of benefits as a result of it.

Q. How does the Department do that? What method is there to correct an error that has been made in a file? A. At anytime the Department determines that there is an under-issuance there is a loss benefit policy—

Q. A what? A. An under-issuance—they have not received the total benefits they are entitled to. There is a loss benefit policy which requires the Department to go back 12 months and recalculate what their benefits should have been and subtract from that what they were actually receiving and to pay any difference to the recipient.

Q. If during the course of the recertification process an error has been discovered how is that handled? A. If the worker determines that it was for a previous period they should apply the loss benefit policy.

Q. What does that mean? A. You give them the benefits that they lost during the period of time that preceded the recertification.

Q. Of the approximately 16,000 people who received the December Notice do you know approximately how many people as of now have not been either recertified or had their case closed? [135] A. There are 193 remaining.

THE COURT: 193?

THE WITNESS: 193 households.

THE COURT: You said people. These are households?

THE WITNESS: That is correct.

Q. Of the 16,000 households that received the Notice? A. Of the 16,000 households there are 193 now that have not had a recertification. Or have not been closed.

Q. I show you a small orange card and ask if you can identify that? A. It is a language card that the Department now sends out with every termination—end of certification notice which tells the recipient in different languages that this is an important notice and to have the attached card translated.

Q. Did the Department use that Notice last November and December? A. No, it did not.

Q. Is the Department now using that Notice? A. The Department now uses this Notice at any time we do a Notice change.

* * *

[136] THE COURT: Is there any Statute of Limitations? What I really mean is is there any cut-off period? Is there any cut-off period on which Massachusetts can reclaim from the Federal government benefits that it has found that recipients have been deserving of but have not been given?

THE WITNESS: There is a limit of one year in the Federal regulation in which we can restore lost benefits—one year preceding the discovery of that loss.

THE COURT: I am not tipping my hat to indicate how I feel. What if this Court should decide that the second Notice is, in fact, illegal and orders new Notices to go out to 16,000 households? Would they then be entitled to lost benefits between last November and December and the time in which those Notices go out? And then Massachusetts would be reimbursed by the Federal government?

THE WITNESS: I cannot answer to whether the Federal government would reimburse us.

In fact, we would issue stamps that would be out of the Federal Treasury, so-to-speak. The Federal government could bill us for those stamps. That I don't know, [137] your Honor.

Can I interject?

THE COURT: Yes.

THE WITNESS: When I say that there are 193 cases that have not had a change in certification period or have not been closed, there has been some intervening action in each one of the other 16,000-plus cases that has caused a recalculation of the household's benefits.

THE COURT: I understand that. What of the 16,000—the majority of them did not realize what their rights were and

never filed any Notices asking for a hearing or what-have-you, and were just simply eliminated or cut off or reduced.

THE WITNESS: I guess what I am saying, your Honor, is subsequent to that—if you ruled that the second Notice was illegal or improper—subsequent to that the recipient was seen or terminated and provided notice through another mechanism which informed them of their rights legally.

In other words, when they were terminated, when their certification period came up they were informed of the fact that they needed to come in and be recertified.

If they chose not to that was their decision. If they came in and they were terminated because their income exceeded the benefits they were also notified of [138] that action.

If their benefits were changed at that recertification they were also notified.

THE COURT: Are you saying that regardless of what the 16,000 Notices that went to the households may have consisted of in format, all of them eventually received an additional Notice later on that their benefits were to be reduced or eliminated?

THE WITNESS: Since that second Notice there are 193 that based upon the criteria we used to select off the computer—my answer to that would be yes.

Those 193 have not—and they may also have been informed. I can't say that. But clearly, their recertification period remains the same and they are still active.

Q. If there was a delay in inputting information about the recipient, for instance, a delay in inputting a decrease in someone's earnings and the December benefits were issued at an amount lower than the recipient was entitled to what is the result of—strike it—will the computer eventually catch up with information if it is given to the worker by the recipient?

A. It is dependent upon the worker inputting new data, changing a future ATP, which is a document they use to get their Food Stamps, and also placing on the file an [139]

amount that the recipient is owed in terms of lost benefits, or what we would refer to as a forward adjustment, and then the system will issue an ATP in the future for a correct amount and will also restore the benefits that they lost.

Q. Have you, since the time these Notices have gone out, changed the format of your mass change Notice in the Food Stamp Program? A. We have started to add on the address card when we perform a mass change the old bonus value and the new bonus value as calculated by the computer.

Q. Have you put any other information on there, any other specific information on that address card? A. No.

Q. For instance, in this case it would be the earned income figure that the household has? A. The earned income figure that we have in our file has been calculated by the worker based upon certain criteria. Certain types of earned income are excluded. You do not count them at all. And the other factor that I would argue, and this is a personal perspective, we work on a calendar month, which consists of 4.333 weeks, and what a worker has to do is take the income received in a four week period, I believe, divided by 4 and multiply it by 4.333, and unless the recipient knew that calculation [140] —the assumption would be I get \$100.00 a week. Why are you saying I have \$433 worth of earned income? I only have \$400.00. It does not take into account the four weeks a year that have a fifth week.

I would argue that that can be misleading to recipients' and could create as much confusion as it does provide a solution.

Q. On the card, Exhibit 1, the November Notice, under the Appeal Rights Section there are several different dates upon which recipients can appeal. Can you explain those three different dates and why you chose to put those dates there? A. They were put there because of the Federal regulation. Basically, it was a Notice—we are not required to give timely notice, in other words, to give—the normal practice is if we take a negative action within the certification period we have

to give a minimum of ten days notice before we take the action.

If the recipient appeals within that ten day period we do not take the action. We hold the action pending the appeal decision.

They also have 90 days from the date of the Notice. If they appeal—well—let me back up. In this case we did not have to give that ten days advance notice. We just had to give notice prior to the action taking [141] place.

If the recipient appeals within that ten day period then the benefits are restored pending the appeal decision.

The recipient also has 90 days in which to appeal that particular decision. If they don't file it within the ten days but they file it before 90 days have elapsed and the appeal decision is in favor of the recipient the Department is obligated to restore benefits retroactive to the date the benefits were reduced or terminated.

The third issue around appeals is that at any time that they feel the Department has done something wrong they have an opportunity to appeal what their benefit level is.

If it was not related to a specific action and the appeal referee finds in favor of the recipient the benefits will only be restored to the date that the appeal was actually submitted.

Q. Are you familiar with the approximate error rate that the Department has in the issuance of Food Stamp benefits?

A. Approximately 13% of the coupons issued are in error.

Q. Can you break that down? A. Approximately 11% are overpayments either to cases [142] that are totally ineligible or cases receiving too much in terms of benefits. The other 2% are two cases receiving under the amount that they should be receiving.

That adds up to 13%, and that is a payment error rate which means that for \$100.00 expended \$13.00 is expended incorrectly. 11 of it is over-issued and 2 is under-issued.

Q. And by over-issued you mean what? A. People receiving benefits to which they are not entitled either in whole or in part.

. . .

Cross Examination by Mr. Rae

XQ. Mr Godes, isn't it true that Massachusetts was the first industrial state in the United States to implement the over changes? A. I can't answer that.

XQ. You don't know? A. I don't know.

XQ. You testified concerning the process of correcting errors. If there was a data entry backlog it is possible to correct errors by means of a forward adjustment. Does a [143] social worker have to initiate that forward adjustment by filling out certain documents? A. Yes. The social worker when they calculate or determine that there has been an under-issuance and the household is entitled to additional benefits has to complete a turn around document, which is one of the two major computer key entry documents.

XQ. If the bottleneck is in the computer data entry system after the point at which the social worker initially generates the turn around document to go to the computer that is at the actual key entry level, the social worker would not know any mistake had been made, isn't that correct? A. No, because the social worker receives when something is key entered—receives something back from the system telling them that it was key entered so they should know when, in fact, it did occur.

XQ. Do you, in fact, have any personal knowledge whether or not social workers, in fact, did generate forward adjustments for all cases affected by the backlog in the first system in October, November and December, 1981? A. No, I don't have personal knowledge.

XQ. Do you keep statistics for Food Stamp cases that are improperly denied? A. The Department does, and I do not recall those [144] statistics. My recollection is negative QC sample. In other words, the error rate is very small.

XQ. Isn't it true that those statistics are not included in that 13% error rate computation that you quoted earlier?

A. Yes, that is correct. The 13% error rate relates to the actual dollars expended in the program, and how much of that is correct or incorrect—a negative sample, someone who may have been terminated improperly or someone who was denied improperly would never have gotten benefits, and so it wouldn't figure into that dollar figure.

* * *

[155] MR. RAE: Your Honor, we mentioned earlier today that we would like to put in a number of representative pages.

THE COURT: Yes. Does the defendant want to add any representative pages to the Q Exhibit? If you want to add them at a later time you may.

MR. HITOV: Your Honor, I might point out that we picked those two pages. They do portray each of the three types of errors that were testified about.

THE COURT: All right. If the defendant wants to add representative pages at a later point they will have the opportunity to do so.

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